ANNUAL REPORT 2004

BRITISH COLUMBIA

Labour Relations Board

DOC
BC
L14
B
2004
c.3

LEGISLATIVE LIBRARY
VICTORIA JAN 05 2006

LEGISLATIVE LIBRARY OF BRITISH COLUMBIA
3 3298 00310 8447

106-03020/

BRITISH COLUMBIA

LABOUR RELATIONS BOARD

2004
ANNUAL REPORT

Ministry of Skills Development and Labour
Honourable Graham Bruce, Minister

December 12, 2005

The Honourable Michael De Jong
Minister of Labour and Citizens' Services
Parliament Buildings
Victoria, B.C.
V8V 1X4

Dear Mr. Minister:

RE: Labour Relations Board 2004 Annual Report

I am pleased to forward the 2004 Annual Report of the Labour Relations Board for the year ended December 31, 2004. This Report has been prepared for your review pursuant to Section 157(2) of the *Labour Relations Code*.

Yours truly,

LABOUR RELATIONS BOARD

Brent Mullin
Chair

Enclosure

TABLE OF CONTENTS

LETTER OF TRANSMITTAL

CHAIR'S MESSAGE

ORGANIZATIONAL CHART

I. THE BOARD 1

A. GENERAL OVERVIEW 1

B. OFFICE OF THE CHAIR 2

C. REGISTRY 2

D. COLLECTIVE AGREEMENT ARBITRATION BUREAU 5

E. ADJUDICATION DIVISION 5

F. MEDIATION DIVISION 6

G. ADMINISTRATIVE SERVICES 8

II. BOARD MEMBERS AND MEDIATORS 9

EXECUTIVE 9

VICE-CHAIRS 10

BOARD MEMBERS 12

MEDIATORS 17

III. HIGHLIGHTS OF BOARD DECISIONS 18

IV. JUDICIAL REVIEW 23

V. STATISTICAL TABLES 25

CHAIR'S MESSAGE

By the start of 2004, the budget cuts and restructuring of the previous years were essentially behind us. Consequently, the Board was able to focus more of its energies on substantive matters. That resulted in some significant, positive labour relations developments in Board decisions.

As is evident from a review of the summary of significant decisions contained in this Annual Report, 2004 was a busy year adjudicatively. More importantly, the Board had the opportunity to address in its decisions critical amendments which had been made to the Code in 1993 and 2002. Those amendments were the product of an effort to reform labour relations in British Columbia through legislative change.

British Columbia started down the path of recognizing and addressing problems in labour relations in the 1992 *Recommendations for Labour Law Reform* ("Report"). That Report was written by an expert and respected Sub-committee of Special Advisors, consisting of Vince Ready, John Baigent, and Tom Roper, Q.C. The mandate for the Report came from the then Minister of Labour who cited "...the need to create fair laws which will promote harmony and a climate conducive to the encouragement of investment". The goal was "...to ensure that the Province maintains and enhances its competitive position in the world market place".

The 1993 amendments to the Code followed the Report. In summary, those amendments emphasized the need for unions and employers to work together in addressing the very real challenges that the businesses and workforces of British Columbia were facing.

The 2002 amendments to the Code continued the reform initiative contained in the Report. As part of that, the 2002 amendments drove home the point that the Code amendments were to be given full effect. An integral part of the 2002 amendments was the duty placed on the Board to exercise its powers and duties under the Code in a manner that "fosters the employment of workers in economically viable businesses" (Section 2(b) of the Code).

Another, new Section 2 duty included recognizing the rights and obligations of employees, as well as the more traditional focus on trade unions and employers under the Code (Section 2(a)).

The former, 1993 amendments had encouraged mediation of disputes and the "cooperative participation between employers and trade unions in resolving workplace issues" (Sections 2 (h) and (d)). "Workplace issues" are defined broadly. They include "adapting to changes in the economy, developing workforce skills and developing a workforce and a workplace that promotes productivity" (Section 2 (d)).

Both the 1993 and 2002 amendments to the Code were thus a clear direction from the legislature to focus on labour relations reform and seek to move labour relations in British Columbia in a positive direction.

In effect, these amendments produce a new framework for labour relations in British Columbia. That new framework is intended to be one upon which success can be built for all – employees, employers, unions and the public interest.

For its part, the Board has been interpreting and applying this new framework in a careful, measured way. Labour relations is a complex human endeavour. Consequently, the Board has acted in a deliberate, incremental manner. The direction in the Code is that we need to work together to fashion better outcomes and success.

A concrete example of how the Board has used the new framework is illustrated in the re-opening of a mine in British Columbia. Under the more traditional approach to labour relations initially being followed by the parties, the re-opening of the mine was in serious doubt. The current Code provided a basis to ensure that the mine re-opened and thereby provided critical jobs for the employees, the local community, and the province.

The Board explained this new focus in the Code as follows:

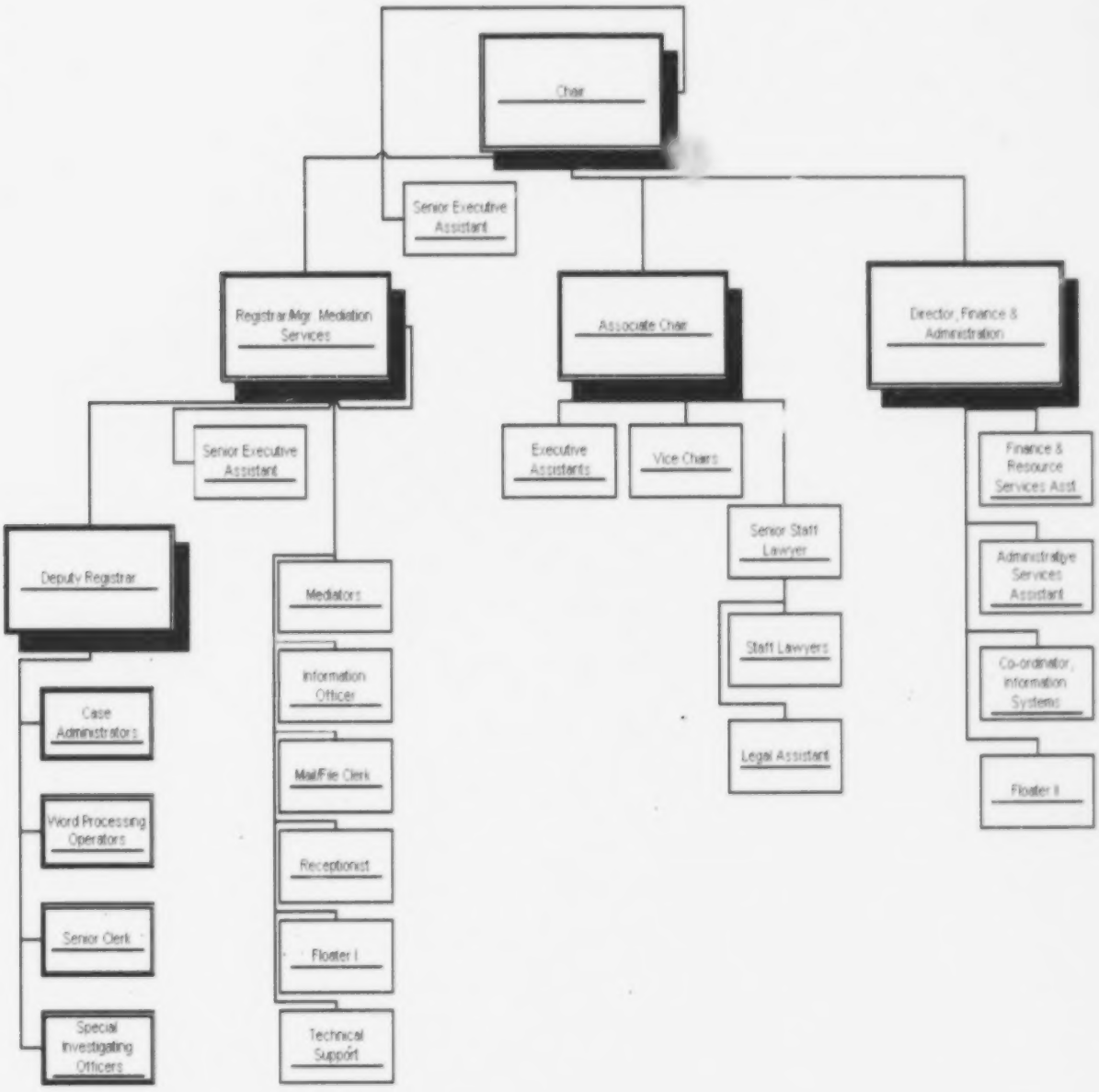
> The re-opening of the mine as a viable business would be in the interests of local workers who need the jobs the mine would provide, the union who will represent those employees, the Employer, and the local community which will benefit from the employment and the economic multiplier effect of it re-opening. Section 2 directs the Board to consider all these interests in interpreting and applying the provisions of the Code.
>
> Labour relations under the Code is intended to further, balance, and contribute to the success of these interests. In the Code, collective bargaining is recognized as an important societal institution which should be a vehicle for success, not failure. Labour relations under the Code needs to be a system which drives and achieves successful outcomes. (*Taseko Mining Ltd.*, BCLRB No. B299/2004 (Leave for Reconsideration of BCLRB No. B218/2004), paras. 12-13).

As well, in 2004 the Board commenced a series of decisions in which it would apply these principles to the again difficult collective bargaining between the Construction Labour Relations Association and the Bargaining Council of British Columbia Building Trades Unions (BCLRB No. B322/2004 and subsequent decisions). The Board also ultimately brought these principles to bear in respect to the extensive disputes among the rival factions in the Carpenters Union, including the rivalry between CMAW and CFAW, both of which were formed in 2004.

Critically, in *Children's and Women's Health Care Centre of British Columbia and BC Cancer Agency*, BCLRB No. B393/2004 (Leave for Reconsideration of BCLRB No. B415/2003) the Board addressed the 1993 amendments to the Code which encourage parties to work with each other in respect to important issues facing them. The focus in these amendments is on problem solving and to deal with issues before they result in difficult outcomes. These provisions in the Code encourage a process of continuous problem solving between rounds of collective bargaining. This focus on problem solving can engender better relations leading to more productive and innovative collective bargaining and collective agreement administration.

In short, problem solving, positive solutions and ultimately success for British Columbia and all the interests in the Code are at the heart of this new approach. To capture that, the Board developed on its website at the end of 2004 a special section entitled "Innovation and Success Stories". These are case studies which exemplify this approach in the Code and concrete results consistent with it. I highly encourage you to review the website and add your own positive innovation and success story to it.

Brent Mullin
Chair


Chair
Senior Executive Assistant
Registrar/Mgr. Mediation Services
Associate Chair
Director, Finance & Administration
Senior Executive Assistant
Executive Assistants
Vice Chairs
Finance & Resource Services Asst
Deputy Registrar
Mediators
Senior Staff Lawyer
Administrative Services Assistant
Information Officer
Staff Lawyers
Co-ordinator, Information Systems
Case Administrators
Mail/File Clerk
Legal Assistant
Word Processing Operators
Receptionist
Floater II
Senior Clerk
Floater I
Special Investigating Officers
Technical Support

I. THE BOARD

A. GENERAL OVERVIEW

The *Labour Relations Code* (the "Code") establishes the Labour Relations Board. The statute grants the Board exclusive jurisdiction to hear and determine applications and complaints under the Code and to make orders under the Code that it deems appropriate.

The Code governs all aspects of collective bargaining amongst the provincially-regulated employers and employees to whom the Code applies. This includes the acquisition of collective bargaining rights, the process of collective bargaining, the settlement and regulation of disputes in both the public and private sectors, and the regulation of the representation of persons by their bargaining agents. In addition to administering and enforcing the Code, the Board is charged with responsibility in labour relations matters under several other statutes.

In carrying out its mandate, the Board must at all times have regard to the duties of the Code. These are set out in Section 2(1):

2. The board and other persons who exercise powers and perform duties under this Code must exercise the powers and perform the duties in a manner that
(a) recognizes the rights and obligations of employees, employers and trade unions under this Code,
(b) fosters the employment of workers in economically viable businesses,
(c) encourages the practice and procedures of collective bargaining between employers and trade unions as the freely chosen representatives of employees,
(d) encourages cooperative participation between employers and trade unions in resolving workplace issues, adapting to changes in the economy, developing workforce skills and developing a workforce and a workplace that promotes productivity,
(e) promotes conditions favourable to the orderly, constructive and expeditious settlement of disputes,
(f) minimizes the effects of labour disputes on persons who are not involved in those disputes,
(g) ensures that the public interest is protected during labour disputes, and
(h) encourages the use of mediation as a dispute resolution mechanism.

In order to accomplish this expansive mandate, the Code establishes the Board's administrative structure. Section 115(3) of the Code provides that the Board shall consist of a Chair, Vice Chairs, and as many other members, equal in number, representative of employers and employees respectively, as shall be considered necessary and appointed by the Lieutenant Governor in Council. The Chair is the head of the Board. The Chair designates one of the Vice Chairs to act as Associate Chair and one to act as the Registrar and Manager, Mediation Services. The Chair, along with the Associate Chair, establishes panels to proceed with applications or complaints under the Code. Panels may be composed of the Chair, Vice Chair(s), and members in accordance with Section 117(4) of the Code.

B. OFFICE OF THE CHAIR

As head of the Board, the Chair has the ultimate responsibility to oversee the administration of the Board and the Code. The Associate Chair of Adjudication and the Registrar/Manager, Mediation Services, report directly to the Chair. The Chair may sit as a panel, either with or without Vice Chairs and/or other members. The Chair presides at all proceedings of the Board and on all panels of which the Chair is a member.

C. REGISTRY

Every application received by the Board is processed through the Registrar's office. Administration and progress of each case is overseen by the Registry until the matter is finally disposed of. Four case administrators, each dealing with a geographic area of the Province, are responsible for initiation of applications and the conduct of files.

Processing of all applications through the Registry enables the Board to utilize computerized case monitoring/management to achieve effective and speedy processing of cases.

Legislated time frames, combined with established Board policies and procedures, result in approximately 58 percent of applications receiving expedited processing. Part 5 applications can require adjudication within 24 hours. Certain unfair labour practice complaints must be adjudicated within three days. Others such as certification and decertification applications are normally processed within approximately one week of receipt.

On certification and decertification applications, case administrators are responsible for completing all necessary procedures before files are forwarded to Adjudication for a hearing. This includes written notification to parties, initiation of investigations by Industrial Relations Officers (IROs) and requests for written submissions. Accordingly, administrative staff must be familiar with legal principles and Board case law and policies.

Informal dispute resolution is an important part of the Board's operations and is used extensively during the processing of applications and complaints. Under the direction of the Deputy Registrar, cases requiring immediate informal dispute resolution are assigned to Special Investigating Officers (SIOs). The vast majority of their case load involves expedited matters such as unfair labour practice complaints, certifications, and Part 5 applications dealing with strikes, lockouts and picketing.

Assistance by SIOs through the informal process can be obtained by the parties or the adjudicator at any stage of proceedings, including case management meetings and after formal hearings have commenced.

These informal settlement discussions are on a "without prejudice" basis. That is to say, a party cannot subsequently raise what was said in such discussions in any formal proceeding. However, settlement agreements reached on issues during the informal proceedings are binding on the parties and will be enforced by the Board.

The informal process achieves a very high success rate. As shown in Table 9 of the statistical tables, approximately 64

percent of unfair labour practice complaints and Part 5 complaints referred to officers are settled.

This informal dispute resolution process helps the Board and the parties make more effective use of resources and personnel, and substantially reduces the time needed to conclude cases, thus reducing expenditures. In addition, by fostering negotiated settlements between the parties, the process furthers the purposes of the Code by minimizing, where possible, decisions imposed by a third party.

Similar valuable services are provided throughout the Province by Industrial Relations Officers of the Employment Standards Branch of the Ministry of Labour. For example, every application for certification or decertification requires a report by an Industrial Relations Officer. Such reports are public, with only names and numbers remaining confidential to the Board.

Both SIOs and Industrial Relations Officers (IROs) also provide considerable assistance through written reports which may involve fact finding, narrowing the issues to be adjudicated, and interviewing individual employees and employers on a wide variety of issues.

In addition to administering the Registry, the Registrar, as a Vice Chair of the Board, may chair or sit as a member of an adjudication panel, and as a sole panel member, may dispose of certain applications where summary disposition is appropriate. This leads to the speedy disposition of many types of applications.

The Deputy Registrar has responsibility for administering the informal process and also deals with Section 12, duty of fair representation applications, most of which require additional information before the Registry can process them.

In accordance with Section 122(3) of the Code, the Board appointed its first Information Officer, effective February 1, 1994. His responsibilities to date have encompassed two main areas: handling incoming inquiry calls, and preparing written material for the public and the labour relations community.

The Information Officer deals with between 30 and 40 calls per day, from employers, unions, individual employees and media representatives. In September of 2002, the Information Officer position was reduced to three days per week.

The Board's publications include an *Employer's Guide to the Union Certification Process*. This plain language guide is sent to employers along with the Notice of Certification Application, to clarify their rights and responsibilities under the Code. The Guide is also available in French, Chinese and Punjabi translations. The day after the Notice and Guide are sent to employers, the Information Officer sends a letter to employers who have not previously been certified, offering to answer any questions about the Code or certification procedures before the hearing date or on the morning of the certification hearing.

A companion publication, *Questions and Answers for* Employees *Regarding the Union Certification Process,* has been developed following an extensive consultation process with the labour relations community. It provides information to employees in plain language concerning the certification process.

Another publication prepared by the Information Officer, the Board's Practice Manual has now been in use since April, 1995.

The Board's web site was officially launched in late 1999. The site includes information concerning the Board's processes, hearing schedules and recent Board decisions. The site is a work-in-progress and the Board welcomes input from the public to help improve the information provided. The web site address is www.lrb.bc.ca.

D. COLLECTIVE AGREEMENT ARBITRATION BUREAU

Effective July 5, 2002, and pursuant to the Labour Relations Code Amendment Act, 2002, the Collective Agreement Arbitration Bureau was brought under the administration of the Labour Relations Board. Pursuant to Section 83(1) of the Code, the Chair designated the Board's Deputy Registrar, Mark Clark, as Director of the Bureau.

The primary function of the Bureau is to appoint arbitrators where one of the parties seeks an expedited form of arbitration, where the parties seek consensual mediation/arbitration, or where there is a failure to appoint or constitute an arbitration board by one of the parties. In addition, the Bureau also appoints settlement officers to assist the parties in resolving grievances filed under collective agreements. The Labour Relations Board offers the services of its special investigating officers (SIO's) and mediators as settlement officers to assist the parties in resolving the grievances prior to an arbitrator's appointment by the Bureau.

Since July 5, 2002, applications filed with the Bureau for the appointment of arbitrators and/or settlement officers are processed through the Registry of the Labour Relations Board. The Registry's case administrators are generally responsible for the day-to-day administrative processing of the applications, with the Director responsible for the selection/appointment of the arbitrator in each case.

The Bureau, though its director, must also maintain a register of arbitrators. A joint advisory committee, as appointed by the Minister, must advise the director on the training and education of arbitrators and settlement officers, research and publication of information about arbitrations, and establishment and maintenance of a register of arbitrators.

The Joint Advisory Committee comprises two representatives of unions, two representatives of employers and two representatives of arbitrators, along with the Director who is the chair of the committee.

E. ADJUDICATION DIVISION

The Adjudication Division is responsible for hearing and deciding applications brought under the *Labour Relations Code*. The Division also attempts wherever possible to settle disputes without formal adjudication through case management and alternative dispute resolution.

Issues requiring adjudication include applications for the acquisition and termination of bargaining rights; unfair labour practice complaints; duty of fair representation complaints by individual employees; common and successor employer applications; reviews of arbitration awards; complaints respecting strikes, lockouts, picketing and other conduct regulated by Part 5 of the Code, including the replacement worker and essential services provisions; and applications for reconsideration of Board decisions.

On average, close to 1,300 cases are adjudicated each year. A comparison of cases assigned for adjudication and adjudicated for the past several years is set out in the accompanying table. The Adjudication Division published 409 decisions. Summaries of the key cases are found elsewhere in this Report.

A major portion of the Division's workload continues to be to the adjudication of expedited applications (including certifications, unfair labour practice and Part 5 applications). During 2004, expedited applications comprised about 74% of cases received in the Board's major adjudication areas.

As of December 31, 2004 the Board had 8 Vice-Chairs and 3 Staff Lawyers.

	1998	1999	2000	2001	2002	2003*	2004
Applications Assigned for Adjudication	1,584	1,603	1,365	1,258	860	890	1,141
Applications Adjudicated	1,562	1,628	1,404	1,293	957	889	936
Applications Outstanding at Year End	435	410	371	336	239	240	445

*Figures adjusted after publication of 2003 Annual Report.

F. MEDIATION DIVISION

The Mediation Division offers assistance in collective bargaining, facilitation of joint sessions which enable employers and trade unions to improve their working relationship and collective bargaining information. These and other services are provided under the direction of the Manager, Mediation Services.

Information about the services available from the Mediation Division can be obtained via the Board's web site (www.lrb.bc.ca). This information includes various practice guidelines on the sections of the *Labour Relations Code* administered by the Mediation Division.

Collective Bargaining Mediation (Sections 55 and 74)

Collective bargaining mediation involves assistance to employers and unions to conclude the terms of first or renewal collective agreements. Mediators utilize a variety of techniques in an effort to assist the parties to reach mutual agreement. In certain cases, the mediator may issue recommendations for settlement.

The majority of mediation appointments are made under Section 74 of the Code and involve the renewal of existing collective agreements. A lesser number of first collective agreement mediator appointments are made under Section 55. In 2004, mediators were appointed to 111 cases under Section 74 and seven cases under Section 55. Mediators were also involved in a further 24 cases which were carried over from previous years.

Essential Services (Section 72)

The mediation of essential services in certain public sector disputes is also part of the mandate of the Mediation Division.

Conflict Management

During 2004, the Mediation Division continued with its conflict management initiatives, not only in keeping with its mandate under the Code, but also with a view to designing individualized and relevant programs. The focus of the programs places greater emphasis on the analysis of conflict and its ongoing management in the workplace.

At the joint request of employers and trade unions, the Mediation Division consults with the parties in an effort to understand the nature and role of conflict in the parties' organization. Current methods of dispute resolution are also examined in the context of the organizational culture within which they operate. The Mediation Division works with the stakeholders to design and implement conflict management processes that focus on systemic change.

Guidelines used in the design process include: stakeholder participation, the adoption of preventative methods of alternative dispute resolution including training in interest-based problem solving, the use of interest based and rights based processes, promotion of dispute resolution throughout all levels of the organization. Openness and broad based participation are encouraged and emphasis is also placed on the importance of feedback and continuous self-evaluation.

Relationship by Objective Program

One of the forums for exploring conflict and designing conflict management systems has been the Relationship by Objectives program. The program which was originally designed as a two-day exploratory retreat has been refocused to place greater emphasis on skills in effective communication and interest based problem solving.

In a preliminary assessment, Mediation staff determine if the parties are committed to make the changes needed in their relationship to foster a more positive climate in the workplace. The assessment is conducted through various forms of information gathering, including meetings, surveys, and/or focus group discussions. Following this initial assessment, a representative sampling of the stakeholders attend a two or three-day session away from the workplace. Two mediators normally facilitate the session. Participants receive skills training, identify conflicts affecting their relationship, and collectively develop strategies to address and manage the identified conflicts. These

strategies take the form of written action plans with specific goals, timeframes for achieving the goals and assignment of specific individuals responsible for ensuring that action plans are carried out.

Labour Management Consultation Committees

Section 53 of the Code requires employers and unions to establish joint consultation committees to promote the cooperative resolution of workplace issues. Using some of the same conflict management techniques described above, the Mediation Division offers assistance to employers and unions in meeting this obligation. Assistance is offered for the establishment of new committees and/or improvement in the effectiveness of existing committees. These sessions are usually scheduled for half a day to a maximum of a day, depending on the needs of the parties.

G. ADMINISTRATION

Information Systems

The Board has a Compaq Alpha Server computer running a Digital UNIX operating system. The in-house applications running on the computer are written in PowerHouse and the information/data collected is stored in an Interbase database. The Board is also running Microsoft Windows NT Server 4.0 as a file and print server.

The principal computer applications contained on the in-house computers run in the following areas: case management, word processing, office automation and end user computing, statistical collection and distribution, library management and computer aided research.

Finance and Administration

The Finance and Administration Department is responsible for human resource matters including recruitment, payroll and benefits administration, financial management including budget, accounts payable/accounts receivable and is also responsible for all security and facilities matters.

Office and Technical Support

All Board departments are ably assisted in the performance of their duties by various office and technical support staff. These include technical support persons, word processors, executive assistants, and administrative support personnel.

II. BOARD MEMBERS AND MEDIATORS

As of December 31, 2004 the Board consisted of the following members:

EXECUTIVE

BRENT MULLIN, *Chair*

Brent Mullin's education includes a B.A. from the University of Victoria, an M.A. from Queen's University at Kingston, Ontario, and an LL.B. from the University of British Columbia. From 1983 to 1992 he practised labour relations, employment and human rights law in Vancouver, British Columbia at Russell & DuMoulin (now Fasken Martineau DuMoulin). From 1992 to 1998 he served as a Vice-Chair at the British Columbia Labour Relations Board, then returned to the practice of labour law at Fasken Martineau DuMoulin. In January 2002 he was appointed Chair of the British Columbia Labour Relations Board and in August 2002, Chair of the Employment Standards Tribunal.

MARK J. BROWN, *Vice Chair and Registrar/Manager Mediation Services*

Mark Brown was appointed to the Board as Vice Chair commencing February 1, 1996. Mark also served as a Board Mediator commencing in March of 2001. In September of 2002 as part of the Board's restructuring initiative, Mark was appointed Manager Mediation Services. In September of 2003 Mark was appointed Registrar as well. Mark graduated from Ryerson in Toronto in 1977 with a Bachelor of Business Management degree. He joined the Canadian Red Cross as an Administrator of one of its centers in Toronto. In 1981 he joined Versa Services Ltd. as its Industrial Relations Manager responsible for collective bargaining and labour relations for Canada. From 1985 to 1995 he was employed by the Health Employers Association of B.C., and one of its predecessor associations. As the Director of Consulting Services, he was responsible for collective bargaining, third party hearings and human resource management for the community care sector. In 1995 he briefly held a similar position for the Community Social Services Employers' Association before joining the Board.

MICHAEL FLEMING, *Associate Chair*

Michael Fleming obtained a B.A. from Simon Fraser University in 1978 and worked with the Ministry of Human Resources as a social worker until 1983. He then worked for the Canadian Farmworkers Union appearing before a number of tribunals and courts on behalf of the members. He received an LL.B. in 1988 from the University of British Columbia and then articled and practised law with the firm of Rush, Crane & Guenther until 1990. From 1990 to his appointment to the Labour Relations Board as Vice Chair in 1997, he was employed by the BCGEU holding several positions and appearing before various tribunals and arbitrators on behalf of the Union and its members. He was appointed as the Associate Chair in the fall of 2002.

VICE-CHAIRS

NAJEEB HASSAN, *Vice Chair*

Prior to his appointment, Hassan was employed with the Health Employers' Association of B.C. as a senior labour-relations consultant, where his responsibilities included the preparation and presentation of industry-significant arbitration for Labour Relations Board proceedings. He has extensive collective bargaining experience, having acted as the assistant spokesperson for health employers in 1998 and during negotiations with health unions in 2001.

SHARON KEARNEY, *Vice Chair*

Sharon Kearney is a graduate of the University of British Columbia where she received a B.A. (Honours) in 1981 and an LL.B. in 1986. She articled in British Columbia and was called to the B.C. Bar in 1987. She practiced management side labour law with the firm of MacDonald Shier from 1987 to 1989. She then joined the Labour Relations Branch of the British Columbia Provincial Government, where she represented the interests of the Government as employer in grievance arbitrations, Labour Relations Board matters and collective bargaining. In 1993 Ms. Kearney joined Ladner Downs where she practised labour and administrative law representing employers in a wide range of matters. She has been a regular lecturer with the Human Resources Managers Association and has contributed articles for publication with the Continuing Legal Education Society of British Columbia. Ms. Kearney was appointed as a Vice Chair on December 14, 1998.

ALLISON MATACHESKIE, *Vice Chair*

Allison Matacheskie received her LL.B from the University of Ottawa in 1989. She articled in British Columbia with the firm of Stevenson, Norman, which practiced labour law exclusively representing unions. She was called to the B.C. Bar in 1990 and remained with Stevenson, Norman until 1992 when she left the area of labour law to practice criminal law as crown counsel. After two years of experience prosecuting at the provincial court level, she returned to labour law and joined the firm of Victory Square Law Office, a firm which exclusively represents unions. She practiced there for more than five years before she resigned for personal family reasons. She returned to practice labour law in 2001 and joined the firm of Granville and Pender Labour Law Office. In October of 2002, she accepted a temporary contract with the Ministry of Attorney General as a special assignment prosecutor. She was appointed as a Vice-Chair in January 2004.

CATHERINE McCREARY, *Vice Chair*

Catherine McCreary received her LL.B. from the University of Calgary in 1983. From 1984 to 1997 she practiced labour law in Calgary with the firm of McGown Johnson acting mainly for unions and employees. In 1996 she was elected to the Board of Directors of First Calgary Savings and Credit Union. In 1997 Ms. McCreary moved to Vancouver where she accepted the position of in-house counsel to Teamsters Local 213. In 1999 she was elected to the Board of

Directors of VanCity Savings and Credit Union. On October 11, 2000 Ms. McCreary was appointed a Vice Chair of the Labour Relations Board.

GREG MULLALY, *Vice Chair*

Greg Mullaly took degrees in philosophy at Dalhousie University (B.A. (Hons.), 1975) and the University of Oxford (B. Phil., 1978) before returning to Dalhousie University to study law. He received an LL.B. in 1981 and then practiced labour law for nineteen years, most recently at Victory Square Law Office. Mr. Mullaly was appointed to the Labour Relations Board in June, 2000.

JAN O'BRIEN, *Vice Chair*

Ms. O'Brien was a Member of the Labour Relations Board for nine years before her appointment as Vice Chair in June 2000. She was co-ordinator of the Capilano College Labour Students Program for two years. She is past President of Local 115-M of the Communications, Energy and Paperworkers' Union and was Administrative Officer of its predecessor, the Vancouver Newspaper Guild. During her 10 years with the union, Ms. O'Brien headed several sets of collective bargaining and led organizing drives. She was a Vice-President of the B.C. Federation of Labour, where she chaired the Women's Rights Committee. She is a former newspaper reporter and a graduate of the University of British Columbia. Ms. O'Brien attended the Harvard University Trade Union Program and is currently working on her MBA at Simon Fraser University.

KEN SAUNDERS, *Vice Chair*

Ken Saunders obtained a Bachelor of Arts degree from Simon Fraser University in 1987 and a Bachelor of Law degree from the University of British Columbia in 1990. Following graduation, he acted as Assistant Director of the Hospitality Industrial Relations Employers' Association where he was responsible for grievance arbitration and Labour Relations Board matters. In 1996 he joined the Community Social Services Employers' Association until his appointment as a Vice Chair in October, 2000. At CSSEA he headed the Dispute Resolution and Research Services Department and acted on behalf of member agencies in Labour Relations Board, Employment Standards, Human Rights and collective agreement arbitration proceedings. On October 11, 2000 Mr. Saunders was appointed a Vice Chair of the Labour Relations Board.

LISA SOUTHERN, *Vice Chair*

Southern received her law degree from Osgoode Hall Law School at York University in 1996. She was called to the British Columbia Bar Association in 1997, specializing in labour, employment and human rights issues. As a labour relations advisor at Forest Industrial Relations Inc., Southern provided employment, labour relations and human rights advice for the forest industry umbrella organization, established to administer and bargain the collective agreement governing member companies and 14,000 employees certified with IWA-Canada.

BOARD MEMBERS

DON ADAMS, *Employer Representative*

Adams has a master's degree in industrial and labour relations from the University of Oregon. He has written various publications on human resource issues and organizational change. Adams is the president of D. Adams Management Services Ltd., consulting primarily to smaller-to-medium size businesses and not-for-profit organizations concerning labour relations, human resources, organization development and performance management. He is a member of the Vancouver Board of Trade and Coalition of B.C. Businesses.

PAULA BODDIE, *Employer Representative*

Paula Boddie has worked in the human resources/labour relations field for over 15 years. She has held senior management positions in the federal and provincial sectors, most recently as Vice President of Human Resources at B.C. Transit. Ms. Boddie held a similar position at the Vancouver Port Corporation and at the Vancouver Stock Exchange. Ms. Boddie has extensive experience in labour relations, human resources, and with employment equity and human rights matters and legislation. Currently, Ms. Boddie is a practising consultant in the broad human resources field.

DENISE BUCHANAN, *Employer Representative*

Denise Buchanan presently leads the Human Resources department of White Spot Limited as Director of Human Resources. She is involved in labour and employee relations, training, health and safety, and compensation issues for over 3000 employees. Under her leadership, White Spot Limited was awarded the Quality of Council of BC's Award of Distinction of People Practices in 1999. Her experience includes working with union and non-union, corporate and franchisee environments. She has been involved in many rounds of labour negotiations both as chief spokesperson and as a committee member, and has participated in grievances, hearings and arbitrations on a wide spectrum of issues. Her prior experience includes over 10 years in Operations and Multi-Unit Management, providing her with a solid business management background to complement her human resources expertise.

PAULA BUTLER, *Employer Representative*

Paula Butler is presently working as a sole practitioner. Her practice includes mediation/arbitration services, and harassment and other investigation services to both public and private sector clients. She also provides legal advice to employers on a variety of labour and employment law issues, and is the Manager of Labour Relations at MDS Metro Laboratory Services. Prior to that, Paula worked for the Community Society Services Employers' Association of B.C. as the Acting Director/Team Coordinator of Human Resources/Labour Relations Services. Paula is a graduate of the University of Victoria with a Bachelor of Law degree.

GEOFFREY HOWES, *Employer Representative*

Geoffrey Howes has 35 years of experience in the restaurant and hospitality industry. He has worked in virtually all aspects of the industry, from waiter to chef to owner. As Director of Operations for Toseki Entertainment Ltd. he is responsible for the day-to-day operation of three fine dining restaurants - Salmon House on the Hill, Aqua Riva and Horizons. He also has considerable experience in labour policy issues, as an executive member of the Coalition of B.C. Businesses and as the Vice-President of Government Affairs for the B.C. Restaurant & Food Services Association.

TAJ KASSAM, *Employer Representative*

Kassam has a degree in hotel management from the University of Strathclyde, Scotland. He is currently the president and chief operating officer of Sandman Hotels, Inns and Suites of Vancouver. He is a director of the British Columbia and Yukon Hotel Association, member of the Hotel Catering and Institutional Management Association and an advisory committee member of the Hotel and Restaurant Management Program at Douglas College.

PETER KULYK, *Employer Representative*

A director of the B.C. Auto Dealers' Association, Kulyk is the president and general manager of Ensign Chrysler in Victoria. Kulyk has nearly 30 years in the automobile industry, working in all areas of the business, owning and managing dealerships for the last 13 years in B.C. and previously in Alberta, Saskatchewan and Manitoba. He has been involved in collective agreements with the machinists union, gaining experience in negotiating and resolving differences.

MARK LEFFLER, *Employer Representative*

Mark Leffler is Manager, Human Resources and Labour Relations for the Greater Vancouver Regional District. In that capacity he is responsible for collective bargaining on behalf of 16 municipalities and the Regional District in a voluntary bargaining association. His department negotiates some 60 collective agreements covering more than 13,000 employees, including inside/outside employees, police, firefighters, nurses, museum and public library staff. The department also provides job evaluation, workers' compensation and employment equity services throughout the Region. Mr. Leffler is a graduate of the University of British Columbia and, prior to joining the GVRD in early 1986, held a variety of labour relations and human resource management positions with Ontario Hydro, Liquid Carbonic Canada Ltd. and B.C. Hydro.

KATHY SANDERSON, *Employer Representative*

Kathy Sanderson previously served the small business community of B.C. as the Chair of the Coalition of B.C. Businesses and as Director of Provincial Affairs for the Canadian Federation of Independent Business. Currently, Ms. Sanderson works as a consultant and in addition to serving on the Labour Relations Board also sits as a member of the B.C. Labour Force Development Board.

FRANZ SCHERUBL, *Employer Representative*

Franz Scherubl has worked in the labour relations field for close to 20 years. He is currently responsible for labour relations, human resources corporate governance and trade training at BC Gas Utility. He has a Bachelor of Commerce and Business Administration degree from the University of British Columbia and has also worked in mining, insurance and retail services.

JOHN BOWMAN, *Employee Representative*

Bowman handles representation for the National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW Canada) before the B.C. and Alberta labour relations boards, as well as the Canadian Industrial Relations Board. He has been involved in organizing more than 10,000 members into the CAW and before that, the Canadian Association of Industrial Mechanical and Allied Workers Union.

NEIL BRADBURY, *Employee Representative*

Neil Bradbury is a National Representative for the Canadian Union of Public Employees. Mr. Bradbury has been a member of the Board of Directors of the Medical Services Association since 1985, serving as Vice Chairman since 1989 as well as Chairman in 1993 and 1994. He is a past member of the Workers' Compensation Boards of Review and has held positions on the executives of CUPE Local 498, CUPE's Fraser Valley District Council, and the CUPE B.C. Executive Board. He has instructed courses for the Canadian Labour Congress, the B.C. Federation of Labour and CUPE's six-level program. He regularly represents employees and locals before tribunals.

RAJ CHOUHAN, *Employee Representative*

Raj Chouhan was appointed to the position of Board Member in august 1994. He was reappointed in November, 2000. He has many years of diversified experience in labour relations and administration. Since 1986 Mr. Chouhan has been working with the Hospital Employees' Union. He is currently Director of Organizing and Bargaining. He has held various positions including advisor to the Workers' Compensation Board Sub-Committee which was set up to draft health and safety regulations for the agricultural industry, founding member of the B.C. Organization to Fight Racism, and President of the Canadian Farmworkers' Union.

DIANE MACDONALD, *Employee Representative*

MacDonald received her Bachelor of Arts degree from Simon Fraser University in 1986, a law degree from Dalhousie in 1991, and her Ph.D. from Northeastern University in 1998. She is a labour lawyer for the B.C. Teachers' Federation. MacDonald is responsible for arbitrations, mediations, and Labour Relations Board hearings. She has been involved in submissions to the Human Rights Commission and provided policy advice to provincial and federal task forces on labour law reform.

GAIL MARTIN, *Employee Representative*

Gail Martin has worked for B.C. Telephone since 1967. For most of that time she has been involved with the Telecommunications Workers' Union as a Local Executive member. She has served on several joint committees with company representatives including contracting out and technological change, work jurisdiction and job sharing. Since 1995 she has worked full-time for the TWU. She is also active in her community. In 1990 she was a candidate for Councillor in Delta, currently serves on the Delta Police Board, and is an executive member of the Canadian Association of Police Boards. She is married with two adult children.

NEIL ROOS, *Employee Representative*

Roos has been involved in the labour relations community in B.C. for almost 35 years. In that time, he has led the Christian Labour Association of Canada from a small union presence to that of some 8,000 members. Roos has represented CLAC interests at the Labour Relations Board and is familiar with jurisprudence as well as board protocol. As well, he has taken courses in labour law and labour relations via the Continuing Legal Education Society of B.C.

MAUREEN SHAW, *Employee Representative*

Maureen Shaw has been President of the College Institute Educators' Association of B.C. (CIEA) for 3 years and Secretary Treasurer for the previous 3. She has also been a member of the Executive Council of the B.C. Federation of Labour and the BCFL Education Committee. An English instructor at Kwantlen University-College, Maureen has also been active at the local level, serving as Chief Steward, Chief Bargainer and Local President.

COLIN SNELL, *Employee Representative*

Colin Snell is the former President and Secretary Treasurer of the British Columbia Provincial Council of Carpenters. Prior to his election in 1985 to the Provincial Council, he was Business Agent of Carpenters' Vancouver Local Union 452 for 15 years. Mr. Snell has held Executive Council positions with the B.C. Federation of Labour, the B.C. and Yukon Territory Building and Construction Trades Council and the Vancouver and District Labour Council.

DAVID VIPOND, *Employee Representative*

David Vipond has been employed with the BCGEU for 21 years. He has worked in the Kootenays, Okanagan and Lower Mainland Area Offices as a Regional Coordinator. He is currently Chief Negotiator for the Master Agreement with the Province of British Columbia. He is also responsible for membership grievance appeals and is a Trustee for the Public Service Pension Plan. He was a National Industrial Officer in Australia with the Community and Public Sector Union where he was responsible for the federal Attorney General's Department, including all related agencies, boards, commissions and courts. He has previously served as Chair of the Board for Surrey Memorial Hospital and as a member of the Business Task Force.

JOHN WEIR, *Employee Representative*

John Weir is the Assistant to the Secretary-Treasurer and Director of Organizing for the B.C. Federation of Labour. From 1972 to 1980, he was a member of Local 480 of the United Steelworkers of America in Trail, B.C., serving as Chief Shop Steward and Safety Committee Vice-Chair. He represented Trail and Kimberley Steelworkers in several rounds of contract negotiations and was Secretary of the Cominco Chain Bargaining Council in Western Canada. As Financial Secretary of Local 480 from 1980 to 1986, he was responsible for Workers' Compensation advocacy, rehabilitation, benefits and pensions. During this period, he served as labour member of the Unemployment Insurance Board of Referees. In 1986, John was appointed to the Workers' Compensation Review Board. He joined the B.C Federation of Labour in 1987 as a Staff Director and has worked on a range of labour relations issues including human rights, occupational health and safety and Workers' Compensation. In 1991, John Weir was seconded to the Canadian Labour Congress to coordinate projects in South Africa and the Middle East, returning to the Federation a year later.

MEDIATORS

As of December 31, 2004, the Board's Mediation Division consisted of the following Mediators:

DEBBIE CAMERON, *Mediator*

Debbie Cameron graduated from the Cariboo College Nursing program in 1976 and worked as a registered nurse for the next four years. In 1981 she was employed by the B.C. Nurses' Union, initially as a Labour Relations Officer, then as Negotiations Officer and in 1992 became the Co-ordinator of Hospitals and Organizing. As Hospitals Co-ordinator she was responsible for negotiations and contract administration of all hospital sector collective agreements, covering more than 17,000 employees. Debbie joined the Board as a mediator in 1994.

GRANT McARTHUR, *Mediator*

Grant McArthur graduated from the University of British Columbia in 1973. He worked for the Hospital Employees' Union for approximately five years. He then joined the Labour Relations Board as a Special Investigating Officer in 1980 and left to work for Canada Post in late 1984. Mr. McArthur joined B.C. Rail in 1986 where he worked in labour relations and as Manager of Personnel Services for three years prior to returning to the Board in 1992.

STEPHEN RINFRET, *Mediator*

Stephen Rinfret has worked in both labour relations and human resources in B.C. for over 20 years. Immediately prior to joining the Board, he was Director of Labour Relations Services for the Continuing Care Employee Relations Association (now HEABC). During this time, Mr. Rinfret also taught an undergraduate course in collective bargaining at Simon Fraser University, and a similar course at the British Columbia Institute of Technology. He holds a Bachelor of Science degree from the University of Montreal (Loyola College) and a Masters degree in Business Administration from Simon Fraser University. Stephen has been with the Board as a mediator since 1994.

III.HIGHLIGHTS OF BOARD DECISIONS

In 2004 the Adjudication Division published 409 numbered decisions. The following are summaries of some of the more noteworthy decisions issued during the year. These summaries are provided for interest only, and they do not constitute legal or authoritative interpretations of the decisions in question. The full text of these and other Board decisions are available on its website (www.lrb.bc.ca), or can be obtained from Canada Law Book (Official Publisher) (Toll free phone number: 1-800-263-2037), the Vancouver Public Library, or the Vancouver Court House Library. Electronic access is available through Quicklaw (Phone Number) (604) 684-1462.

Tom Smith, BCLRB No. B15/2004 (Leave for Reconsideration of BCLRB No. B218/2003) – Section 12 does not apply to matters outside a union's exclusive bargaining agency, and this is not altered by the fact that a union has chosen to act in relation to such matters.

Construction Labour Relations Association, BCLRB No. B37/2004 – Where a party has not sought a stay of an arbitrator's interim ruling and has not argued that any substantive prejudice arises from the ruling, it would be premature for the Board to intervene and review the interim ruling under s. 99. The party may raise arguments concerning the interim ruling if it ultimately chooses to bring a s. 99 application regarding the final award.

Victoria Shipyards, BCLRB No. B69/2004 – Where alleged illegal picketing has ended, the Board's usual policy is to adjourn a Part 5 application and defer to the grievance and arbitration process. However, where a third party may be denied a substantive legal right if the Board does not decide the legality of alleged illegal picketing, the Board may exercise its discretion to decide the issue.

Certain Employees of John Howard Society of the Thompson Region, BCLRB No. B77/2004 – The Board has established a "bright line" with respect to the timeliness of an application for partial for partial decertification: it cannot be brought once notice to bargain has been given. That prohibition on bringing an application for partial decertification during collective bargaining ends at the date of ratification.

Compass Group Canada, BCLRB No. B122/2004 – Under s. 143, the Board has the discretionary authority to issue anticipatory declarations. Such declarations will not be made routinely, and they will only be made where the facts are sufficiently crystallized. An assessment of whether the facts are sufficiently crystallized is made in the context and circumstances of each case. In addition, there must be a valid labour relations purpose for exercising declaratory powers with respect to anticipated events. Where no certain date has been set for picketing of health care facilities, the Board may nonetheless exercise its declaratory powers where there is evidence from which it can reasonably infer an imminent likelihood of picketing.

Weyerhaeuser Company Ltd., BCLRB No. B130/2004 (Leave for Reconsideration of BCLRB No. B88/2004) – Under the Code, contracting out and successorship are distinct concepts. Successorship requires a relinquishing of control over the business, while contracting out requires that ultimate control be retained by the original party.

Canadian Corps of Commissionaires, BCLRB No. B136/2004 (Leave for Reconsideration of BCLRB No. B372/2004, upheld on judicial review: *Public Service Alliance of Canada, Local 05/20500 v. British Columia Labour Relations Board et al.*, 2005 BCSC 577) – The

1993 Code amendments to the Board's power of reconsideration (formerly s. 36, now s. 141 and s. 142) did not alter the Board's ability to grant partial decertification of a bargaining unit. The Board continues to have a discretionary power (under s. 142) to grant applications for partial decertification.

Health Employers Association of British Columbia, BCLRB No. B151/2004 – While the board has jurisdiction to ensure its essential service orders are effective, the Board does not have the jurisdiction to declare a contravention of its order based on alleged tortious conduct. A request for relief from tortious conduct must be made to the Court.

Aramark Canada Facility Services Ltd., BCLRB No. B173/2004 (Leave for Reconsideration Denied, BCLRB No. B214/2004) – While there is no set way for a union whom the employer has voluntarily recognized to show that it represents the employees for whom another union has filed an application for certification, the Board will look for positive evidence of representation, before the first union can hold up its collective agreement as a bar to the second union's application for certification. Here there was no evidence the employees in question had freely chosen to be bound by the collective agreement and represented by the IWA. Accordingly, the agreement could not be held up as a bar to the HEU's applications for certification.

Certain Employees of Transwest Roofing Ltd., BCLRB No. B184/2004 (Leave for Reconsideration of BCLRB No. B251/2003) – Where employees of a company in the construction industry do not have recall rights under the collective agreement, but only a history of being laid off in the winter and re-hired the next spring, they would only be entitled to vote if they meet the *B.A.T.* "30/30" rule. A general exception should not be made to the rule to find that such employees have a sufficient connection to the workplace so as to be entitled to vote in a representation vote. While there is scope for individual exceptions to be made in compelling circumstances, a past pattern of re-hires for seasonal work does not, in and of itself, provide an appropriate basis for an exception to the rule.

Victoria Shipyards Co Ltd., BCLRB No. B192/2004 – Where the Board has issued an interim order directing a union and its members to stop striking and picketing, a party must comply with the order while disputing it by way of a reconsideration application. A party must also seek a stay of the original decision if it wishes to avoid the need for immediate compliance with an order. Here, where the Ferry Workers' Union continued to picket, and did not seek a stay of the interim order, the picketing was found to be in breach of Part 5.

Farmer Construction Ltd., BCLRB No. B213/2004 – The absence of the words "without cause" in Section 14.9 of the Public Sector Employers Act, as amended by s. 54 of the *Administrative Tribunals Appointment and Administration Act*, renders it at least equivocal whether the Legislature intended to imply a power to terminate the appointments of tribunal adjudicators mid-term without cause. As termination of Board appointments mid-term without cause would offend the fundamental common law principle of institutional independence, applying an *Ocean Port* analysis, it is assumed the Legislature intended not to affect the security of tenure of Board adjudicators. They are subject to removal mid-term only for cause or in the event of a justified and *bona fide* systemic restructuring of the tribunal. Accordingly, the amendment to s. 14.9 does not affect the institutional independence of Board adjudicators.

Weyerhaeuser Company Limited, BCLRB No. B221/2004 (upheld on reconsideration, BCLRB No. B319/2004) – A union and an employer are free to agree to restrict the employer's ability to dispose of part of its business. Whether any particular collective agreement provision (including a "no contracting out" provision) amounts to such a

restriction is a matter for an arbitrator to decide.

Hudson's Bay Company, BCLRB No. B226/2004 – An employer is "required or authorized by law", within the meaning of the *Personal Information Privacy Act* (PIPA), to disclose personal information, such as names and wage rates, of employees where such disclosure is needed to fulfill the Code obligation to bargain in good faith. Where an employer is required or authorized by law to disclose personal information, PIPA does not require individual consent to the disclosure of personal information.

Ledcor CMI Limited, BCLRB No. B229/2004 (Leave for Reconsideration of BCLRB No. B218/2004) – The re-opening of the mine as a viable business would be in the interests of the employees, the union, the employer and the local community. Section 2 of the Code directs the Board to consider all these interests in interpreting and applying the Code. Labour relations under the Code is intended to further, balance and contribute to the success of these interests; it should be a system which drives and achieves successful outcomes.

Construction Labour Relations Association, BCLRB No. B322/2004 – The Board found that bargaining between CLRA and BCBCBTU had reached an impasse over bargaining format, before real collective bargaining had even begun. In these circumstances, the Board found both parties had breached their obligations under s. 11 of the Code. By way of remedy, the Board directed the parties to engage in meditation and problem solving discussions with the Board's assistance, to develop a format by which collective bargaining could occur. If a resolution was not achieved through that process, the Board would utilize its adjudicative authority to impose a format and the conditions necessary to facilitate successful collective bargaining.

Sodexho MS Canada Limited, BCLRB No. B323/2004 (Leave for Reconsideration of BCLRB No. B187/2004) – When a union holds up a voluntary agreement as a bar to a subsequent certification application by another union, the issue is not simply whether the voluntary recognition agreement has been ratified in some manner or other, but whether it has been ratified in a manner that established that the first union is representative of the employees covered by it. The first union must show that the ratification process was reasonable.

Coast Master Agreement Umpires, BCLRB No. B334/2004 – The Umpires applied under Section 98 for a binding opinion from the Board with respect to their jurisdiction under the Coast Master Agreement. However, the Board found that the matters at issue were particularly suited to arbitration, not Board opinion and decision. The matters involved the interpretation and application of the collective agreement, and the parties' self-governance. Accordingly, the request for a Board opinion on the matters was declined.

Board of School Trustees of School District No. 36 (Surrey), BCLRB No. B336/2004 (Leave for Reconsideration of B116/2004) – Arbitrators may deal with motions to dismiss at the close of a party's case in any manner that is consistent with Section 2 principles; they are not required to apply the strict legal distinction between "no evidence" motions and "insufficient evidence" motions. However, natural justice requires that the party whose case is dismissed must first have had the opportunity to argue whether there was "no" or "insufficient" evidence.

ACFC West, BCLRB No. B343/2004 – IATSE's threat to expel members who also belong to ACFC is a violation of Section 9 of the Code as it is coercive and intimidating and could reasonably induce someone to refrain from being or cease to be a member of a trade union.

Sodexho MS Canada Limited, BCLRB No. B349/2004 – Employers' preliminary objection dismissed; HEU and BCGEU not found to be

inappropriate bargaining agents for employees of Sodexho, Aramark and Compass, private contract service providers, by virtue of their stated opposition to the *Health and Social Services Delivery Improvement Act* (Bill 29), the legislation which permitted the contracting out of non-clinical healthcare services.

Sodexho MS Canada Limited, BCLRB No. B352/2004 – A union may make a single application under Section 142 to vary several additional sites into an existing bargaining unit, if the employer has not objected to the appropriateness of the union applying to represent each site one by one. Since the purpose of variance is to build an all-employee bargaining unit, it makes no difference whether variance is done one site at a time or two or more sites at the same time.

Construction Labour Relations Association of British Columbia, BCLRB No. B360/2004 (Leave for Reconsideration of BCLRB No. B301/2004) – In order to claim Section 5(1) protection, a person must establish that the treatment of which they complain arose from their invoking or being involved in a Board proceeding (or taking steps to invoke or be involved in a Board proceeding). They cannot merely rely on an argument that they were engaging in a "right" under the Code, if that right is not connected to invoking or being involved in a Board proceeding.

Certain Employees of 7-Eleven Canada Inc., BCLRB No. B369/2004 – Section 133(1)(c) does not give the Board jurisdiction to grant an "equitable remedy" in the absence of a finding that a person has contravened the Code, a collective agreement or the Labour Relations Regulation. Accordingly, the Union's argument that the certain employees came to the Board with "unclean hands", even if true, would not give jurisdiction to grant the remedy sought (refusal of their Section 33 application) in the absence of a finding of a contravention.

Zero Downtime Inc. and Others, BCLRB No. B374/2004 (upheld on reconsideration, BCLRB No. 22/2005; upheld on judicial review: unreported oral judgment pronounced in chambers by Groves J, on August 18, 2005, Vancouver Registry No. L050535; Notice of Appeal filed) – Where there is one member of a council of trade unions that is a party to a collective agreement with the employer, the council may available itself of the exception in Section 18(4)(b) even when other members of the council are not subject to collective agreement with the employer.

Children's and Women's Health Care Centre of British Columbia, BCLRB No. B393/2004 (Leave for Reconsideration of BCLRB No. B415/2003) – Section 54 does not require an employer to discuss with the union alternatives to a decision to make a change affecting a significant number of employees where the Employer's decision to make the change is final. However, section 53, if triggered, can require an employer to meet regularly with the union between bargaining and discuss concerns which might result in a decision to make a change affecting a significant number of employees, before a final decision is made.

Health Employers Association of British Columbia, BCLRB No. B395/2004 (Leave for Reconsideration of BCLRB Nos. B64/2004 and B92/2004 ; currently the subject of an application for judicial review) – The central issue was whether the definition of strike in the Code infringes s. 2(b) of the *Charter of Rights and Freedoms* to the extent that it prohibits strikes undertaken for a political rather than a collective bargaining purpose and, if so, is that infringement demonstrably justified under a s. 1 *Charter* analysis. A majority of the reconsideration panel held that, until and unless a court decides otherwise, the definition of strike in the Code remains constitutionally valid.

Aquila Networks Canada (British Columbia) Ltd., BCLRB No. B408/2004 – If the essential nature of a dispute involves an alleged breach or interpretation of a union's constitution, the Board has no jurisdiction to deal with the dispute. Accordingly, the Board has no jurisdiction to decide whether CUPE, Local

378 has complied with its constitution and bylaws and taken the steps necessary to change its name (from OPEIU to COPE).

IV. JUDICIAL REVIEW

Although a number of petitions for judicial review of Board decisions were filed in 2004, only two judicial review decisions were issued in 2004:

***Health Employers Association of British Columbia v. Nurses' Bargaining Association and Labour Relations Board of British Columbia*, 2004 BCSC 911, [2004] B.C.J. No. 1395, 16 Admin.L.R. (4th) 251 (S.C.)**

HEABC applied for judicial review of a s. 141 (reconsideration) decision which had overturned an original decision under s. 99. The s. 99 decision had set aside an award on the basis that the arbitrator erred in his use of extrinsic evidence. The reconsideration decision in turn found the s. 99 decision erred by exceeding the proper scope for review under s. 99 of an arbitrator's use of extrinsic evidence. The result of the reconsideration decision was that the arbitrator's award was restored. HEABC sought to overturn the reconsideration decision and restore the s. 99 decision setting aside the award.

HEABC argued for a less deferential standard of review of the Board's reconsideration decision than patent unreasonableness, but the Court rejected this argument:

> The petitioner argues that the Board does not have greater expertise than the Court with respect to the use of extrinsic evidence in the context of decision making. The petitioner asserts that when the Board is making decisions which do not call upon its special expertise, the lesser standard of reasonableness should be applied.
>
> However, the issue before me is not the Arbitrator's decision regarding the use of extrinsic evidence. It is the Reconsideration Panel's decision which dealt with the Board's role in reviewing an arbitration award involving the interpretation and application of the collective agreement.
>
> ...
>
> Although the issue in this case involves questions of law as well as fact, the legal issue concerns the appropriate interpretation and application of s. 99 of the Code. The question involves policy considerations regarding the scope of the Board's review of an arbitrator's decision relative to the interpretation and application of a collective agreement and, in my view, falls squarely within the expertise of the Board.
>
> In the circumstances, the appropriate standard of review is patent-unreasonableness. (paras. 32-33 &37-38)

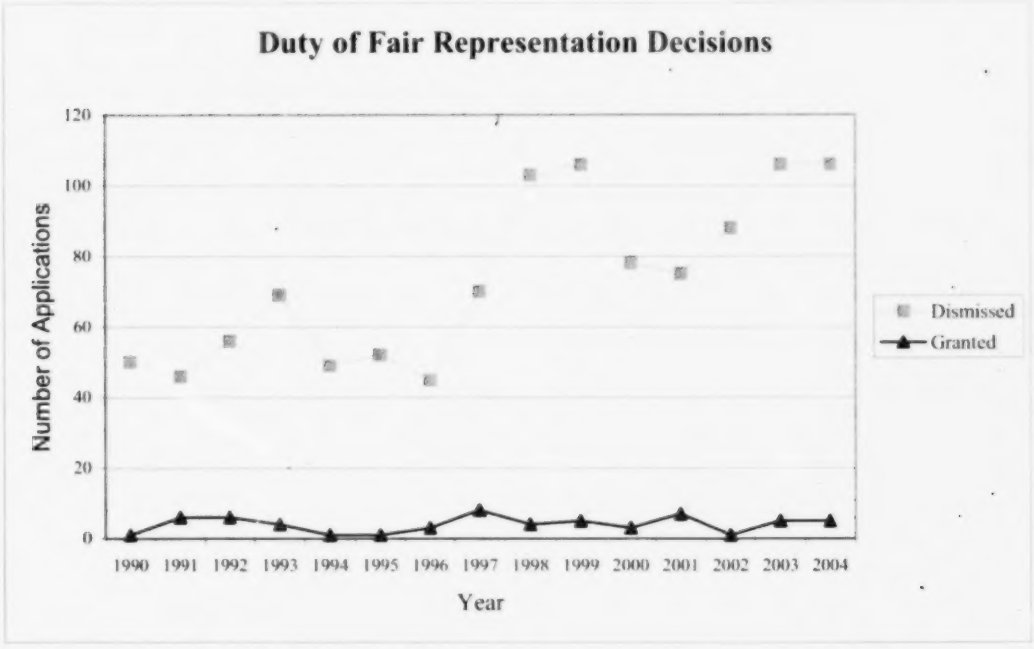
In upholding the reconsideration decision on a standard of patent unreasonableness, the Court noted the Board's policy of deference towards the decisions of labour arbitrators, which it found was similar to the policy of deference applied by courts towards decisions of labour arbitrators in jurisdictions where such decisions are reviewed at first instance by judges. The Court found that the reconsideration decision's interpretation of the scope of review under s. 99 was consistent with this approach, and that the "essence" of the reconsideration decision was the policy decision "that the Arbitrator's view on what weight is to be given to the extrinsic evidence was not a matter within the proper scope of the Board's review under s. 99 to ensure consistency with the principles expressed or implied in the Code" (para. 53).

The Court found the reconsideration decision on the scope of s. 99 (and its decision that the original decision exceeded that scope in its review of the award) was not patently

unreasonable, and accordingly the petition for judicial review was dismissed.

British Columbia Government and Service Employees' Union v. Province of British Columbia and the British Columbia Labour Relations Board ***(unreported oral judgment pronounced in Chambers by Brown J. on June 10, 2004, Vancouver Registry No. L032899)***

BCGEU sought judicial review of a decision of the Board upholding on reconsideration a s. 99 decision which declined to set aside an arbitrator's award. All parties agreed that the standard of review was patent unreasonableness. The BCGEU argued unsuccessfully that the Board's decision to uphold the award was patently unreasonable. The Court noted that the arbitrator "interpreted the collective agreement as a whole" and that the original panel and the reconsideration panel "concluded that the arbitrator had met the genuine effort test applied by the Board in reviewing the arbitrator's interpretation of collective agreements" (para. 20). The Court found the Board's decision to uphold the award on that basis was not patently unreasonable, and dismissed the petition.



V. STATISTICAL TABLES

DESCRIPTION		PAGE
EXPLANATORY NOTES TO TABLES		27
TABLE 1	Applications and Complaints Filed and Disposed of in 2003-2004	30
CHART 1	Applications and Complaints Filed in 2004 by category (ref: Table 1)	35
TABLE 1A	Certification Applications and Certification Cancellations Under S. 33(2) Granted in 2004 – Analyzed by Industry	36
CHART 1A	Certification Applications Granted by Industry Type: number of applications (ref: Table 1A)	37
CHART 1B	Certification Applications Granted by Industry Type: number of employees (ref: Table 1A)	37
CHART 1C	Certification Cancellations (s. 33(2)) Granted by Industry Type: number of applications (ref: Table 1A)	37
CHART 1D	Certification Cancellations (s. 33(2)) Granted by Industry Type: number of employees (ref: Table 1A)	37
TABLE 1B	Certification Applications and Certification Cancellations Under S. 33(2) Filed and Granted in 2004 – Analyzed by Union	38
TABLE 2	Certification Applications and Certification Cancellations Under S. 33(2) Filed / Decided in 2004	40
TABLE 2A	Certification Applications and Certification Cancellations Under S. 33(2) Granted in 2004 – Analyzed by the Size of the Bargaining Unit	41
CHART 2A	Certification Applications Granted: by size of bargaining unit (ref: Table 2A)	42
CHART 2B	Certification Cancellations Granted by size of bargaining unit (ref: Table 2A)	42
TABLE 2B	Certification Applications Granted Between 1990 and 2004 by the Size of the 59 Bargaining Unit	43
TABLE 3	Applications to Cancel Certifications Disposed of in 2003 – 2004	44
TABLE 4	Reconsiderations Disposed of in 2004	45
CHART 4	Reconsiderations Disposed of: Types of Applications Being Reconsidered (ref: Table 5)	46
TABLE 5	"Success" Rate of Reconsiderations Disposed of Between 1994 and 2004	47
CHART 5	Percentage of Reconsideration Applications (s. 141) Granted (ref: Table 6)	48

DESCRIPTION		PAGE
TABLE 6	"Success" Rate of Reviews of Arbitration Awards Disposed of Between 1994 and 2004	47
CHART 6	Percentage of Reviews of Arbitration Awards (s. 99) Granted (ref: Table 6A	48
TABLE 7	Applications and Complaints Filed in 2004 – Analyzed by Applicant Type	49
TABLE 8	Time Required to Process Certain Applications in 2004	51
TABLE 9	Officer Assignments Completed in 2004	52
TABLE 10	Requests For Automatic Certification Pursuant to Section 14(4)(f) of the *Labour Relations Code* (Previously Section 8(4)(c) of the *Labour Code* and the *Industrial Relations Act*) as a Result of an Alleged Unfair Labour Practice Violation (Years 1977 to 2004)	53

EXPLANATORY NOTES TO TABLES

The following tables provide an analysis of the applications filed and disposed of in 2004. In some cases, statistics from 2003 and other years are provided for comparative purposes.

There are several changes of note in the 2004 statistical tables and charts. In order to keep the table numbers consistent from year to year and to position tables dealing with the same subject together, certain tables, added at various times, have been given an existing table number with a suffix (e.g., 1A, 1B, etc.). Below is a list of the changes for 2004:

- Footnote previously added to Table 1 regarding number of employees affected by certifications is available in Table 2;
- Footnote previously added to Table 1 regarding number of Settlement Conferences held for Duty of Fair Representation complaints (s.12 of the *Code*) is not available for 2004;
- Tables 1A, 1B, 2, and 2A previously included figures for Certification Applications only. As of 2004 these tables include figures for Certification and "Decertification" (s.33(2)) applications;
- Table 2 includes the number of applications filed and the number of affected employees for same (previously included in a Table 1 footnote);
- Tables available in previous years regarding vote information for representation applications, details of Part 5 applications, and details of Mediation Officer appointments are not available for 2004;
- Table 6A is a tabular representation of the figures previously reported in 'chart' format only (Chart 6A in 2003 report): "Success Rate" of Reviews of Arbitration Awards. It tracks data from previous years back to 1994.

A number of other changes have been made during past years in the statistical base used in some of the categories in Table 1. The changes have been summarized as follows for reference.

Applications for Collective Agreement Arbitration

The Labour Relations Board assumed the processing of these applications from the Collective Agreement Arbitration Bureau in mid-2002; however, due to technical and procedural considerations, applications under Sections 86, 87, 104 and 105 ("CAAB" applications) were counted in the Board's statistics only if received on or after January 1, 2003 (i.e., any 'outstanding' CAAB applications at the end of 2002 are not included in the Board's statistics).

Requests for Appointment of a Mediator

Applications to appoint a Mediator under Section 74 were counted as applications for the first time in the 2002 Annual Report (see Table 1: "Applications and Complaints Filed and Disposed of"). These applications were processed by the Board/Council prior to 2002 but appeared only in the "Analysis of Mediator Appointments" Table (not available for 2004).

Complaints of Unfair Labour Practices

Prior to 1989, complaints under Sections 2 or 3 (now Sections 5 or 6) of the legislation were not broken down by sub-section. From 1989 to 1996, complaints under each particular sub-section were counted as one complaint.

In 1996, the Board has decided to revert to the pre-1989 method of counting these complaints. The change affects the statistics published as Sections 2,3 and 4 of the *Industrial Relations Act* and Sections 5,6,7 and 9 of the *Labour Relations Code*. The following table displays the statistics as they were published and as they would have been under the pre-1989 method of counting (rev).

Type of Application	NUMBER OF APPLICATIONS OR COMPLAINTS									
	Year	Filed	Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other	Hearing Held
Other Unfair Labour Practice Complaints (ss.5,6,7 and 9 of the Labour Relations Code or ss.2,3, and 4 of the Industrial Relations Act)	1995	825	909	26	0	573	192	118	0	449
	1995 (rev)	488	529	25	0	338	97	69	0	221
	1994	899	831	9	0	586	136	100	0	362
	1994 (rev)	513	467	9	0	326	74	58	0	176
	1993	748	676	3	0	440	134	99	0	331
	1993 (rev)	422	390	2	0	249	73	66	0	177
	1992	416	345	0	0	205	108	32	0	176
	1992 (rev)	228	185	0	0	112	54	19	0	83
	1991	346	370	0	0	241	92	37	0	NP
	1991 (rev)	187	199	0	0	135	44	20	0	
	1990	386	388	5	0	220	100	63	0	NP
	1990 (rev)	229	225	3	0	124	62	36	0	
	1989	209	177	0	0	96	47	34	0	NP
	1989 (rev)	123	118	0	0	61	36	21	0	

NP –Not Published

Stay Applications

Applications for a Stay of proceedings were counted as applications for the first time in 1993 (see Table 1: "Applications and Complaints Filed and Disposed of"). A footnote has been added to the Miscellaneous category to facilitate comparisons over time. In previous years, these applications were not counted.

For an Interpretation of the Legislation as it Applies to the Collective Bargaining Relationship

Prior to 1989, an application regarding the inclusion or exclusion of employees from a bargaining unit was counted as one application for each employee in question if a ruling was made; if the application was withdrawn, it was counted as one application regardless of the number of employees involved. From 1989 on, an application regarding the inclusion or exclusion of employees is counted as one application regardless of the number of

employees in question and regardless of whether or not a ruling is made.

To File an Order in the Supreme Court

Applications to file orders in the Supreme Court were counted as applications for the first time in 1989 (see Table 1: "Applications and Complaints Filed and Disposed of"). These applications had been processed by the Board/Council since 1974 but were not registered or counted prior to 1989.

For an Order or Opinion Pertaining to Applications Pursuant to Part 5 (Strikes, Lockouts, Picketing, etc.)

Prior to 1988, each application under Part 5 was counted as one application, regardless of the sections cited. One application could cover, for example, a strike or a picket or a combination of both. From 1988 on, each section and sub-section of Part 5 is counted as a separate application.

GENERAL NOTES

For the convenience of users, the following is a brief description of some of the disposition codes used in Table 1.

- Applications and complaints granted include those where an order is issued, whether a regular order or a consent order. If an application is partially granted, it is included in this category.
- Applications and complaints dismissed include those where no violation is deemed to have occurred, where the application does not conform to statutory or regulatory time limits or where it is determined no further action is warranted.
- Applications and complaints not proceeded with include only those where the applicant has not supplied the Board with sufficient information to process the application. The application is returned but the applicant is free to reapply.
- Complaints that do not require a decision from the Board are designated settled including cases for which the applicant submits a withdrawal.

It is important to note when using these statistics that the work content embodied in individual applications varies widely, both among different categories of applications and among applications in the same category. The work content of the administrative, investigative and decision-making functions can vary widely as well, from category to category and from application to application.

TABLE 1: Applications and Complaints Filed and Disposed of in 2004 (including comparative figures for 2003)

Type of Application / Complaint	Year	Filed	Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other	Hearing Held
Complaints of Unfair Labour Practices										
Complaints Regarding Internal Union Affairs (s.10)	2004	14	15	4	0	4	3	4	0	1
	2003	15	15	2	0	5	2	6	0	3
Complaints Regarding Duty to Bargain in Good Faith (s.11)	2004	38	34	0	0	25	5	4	0	9
	2003	42	43	1	0	29	5	8	0	11
Complaints Regarding Duty of Fair Representation (s.12)	2004	90	132	40	0	13	8	71[1]	0	14
	2003	189	192	53	0	28	5	106[2]	0	14
Other Unfair Labour Practice Complaints (ss.5-9)[3]	2004	233	223	4	0	154	37	28	0	77
	2003	294	291[1]	3	0	222	39	27	0	126
Religious Exemption (s.17)	2004	6	4	0	0	0	4	0	0	0
	2003	8	10	1	1	0	7	1	0	0
Certification Applications (ss.18, 19 and 28)	2004	374	177	0	55	0	88	34	0	147
	2003	165	157	1	43	0	75	38	0	125
Certification Variances (ss.28 and 142)	2004	191[4]	232[5]	3	21	0	188	20	0	44
	2003	324[6]	282[7]	5	25	0	235	17	0	41
Certification Cancellations (ss.33 and 142)[8]	2004	102	84	9	3	0	53	19	0	69
	2003	118	113	15	11	0	75	12	0	81

[1] 32 of the 71 dismissed complaints filed under the *Labour Relations Code* were dismissed because a *prima facie* case was not established.
[2] 69 of the 106 dismissed complaints filed under the *Labour Relations Code* were dismissed because a *prima facie* case was not established.
[3] In 1996, the Board changed the method of counting complaints under Sections 5 and 6 of the *Labour Relations Code*. Figures in this category reported prior to 1996 cannot be compared to figures in this category reported from 1996 to present.
[4] Includes 15 'partial decertification' applications.
[5] Includes 24 'partial decertification' applications. See TABLE 3.
[6] Includes 32 'partial decertification' applications.
[7] Includes 27 'partial decertification' applications. See TABLE 3.
[8] See TABLE 3.

TABLE 1: Applications and Complaints Filed and Disposed of in 2004 - continued (including comparative figures for 2003)

Type of Application / Complaint	Year	Filed	Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other	Hearing Held
Cancellation of a Voluntary Recognition (s.34)	2004	9	11	0	2	0	6	3	0	8
	2003	19	16	1	5	0	10	0	0	11
Permission to Alter Conditions of Employment (ss.32 and 45)	2004	1	1	0	1	0	0	0	0	0
	2003	2	1	0	0	0	1	0	0	1
Alleged Unlawful Alteration of Employment Terms and Conditions (ss.32 and 45)	2004	21	24	0	0	22	2	0	0	5
	2003	27	21	0	0	18	3	0	0	8
Declaration of Successor Status										
Successor Employer (s.35)	2004	68	75	1	20	0	50	4	0	10
	2003	77	77	0	19	0	55	3	0	10
Successor Union (s.37)	2004	60	38	0	1	0	37	0	0	0
	2003	56	27	0	0	0	26	1	0	1
Common Employer (s.38)	2004	22	22	0	14	0	6	2	0	7
	2003	31	22	0	13	0	6	3	0	8
Accreditation Applications (s.43)	2004	0	0	0	0	0	0	0	0	0
	2003	0	0	0	0	0	0	0	0	0
Accreditation Variances (ss.43 and 142)	2004	12	12	0	0	0	12	0	0	0
	2003	24	22	0	0	0	21	1	0	1
Accreditation Cancellations (s.142)	2004	0	0	0	0	0	0	0	0	0
	2003	0	0	0	0	0	0	0	0	0
Alleged Failure to Execute or Comply with a Collective Agreement (s.49)	2004	3	3	0	0	1	2	0	0	3
	2003	9	7	1	0	4	1	1	0	0

TABLE 1: Applications and Complaints Filed and Disposed of in 2004 - continued (including comparative figures for 2003)

Type of Application / Complaint	Year	Filed	Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other	Hearing Held
First Collective Agreement (s.55)	2004	7	7	0	0	6	n/a	n/a	1[1]	0
	2003	9	11	0	0	4	n/a	n/a	7[1]	1
Appointment of a Mediation Officer (s.74)	2004	111	104	1	1	75	n/a	n/a	27[1]	0
	2003	127	131	1	0	100	n/a	n/a	30[1]	0
Collective Agreement Arbitration Bureau (CAAB)[2]										
Section 86 (Appointment of Arbitrator)	2004	84	90	0	55	0	n/a	n/a	35[3]	n/a
	2003	120	110	0	49	0	n/a	n/a	61[3]	n/a
Section 87 (Appointment of Settlement Officer)	2004	36	44	0	5	21	n/a	n/a	18[4]	n/a
	2003	108	96	0	54	24	n/a	n/a	18[4]	n/a
Section 104 (Appointment of Arbitrator)	2004	230	238	4	49	38	n/a	n/a	147[5]	n/a
	2003	404	389	12	111	70	n/a	n/a	196[5]	n/a
Section 105 (Appointment of Mediator-Arbitrator)	2004	6	5	0	0	0	n/a	n/a	5[6]	n/a
	2003	42	42	0	2	0	n/a	n/a	40[6]	n/a
Combined CAAB Sections	2004	356	377	4	109[7]	59	n/a	n/a	205	n/a
	2003	674	637	12	216[7]	94	n/a	n/a	315	n/a

[1] Applications in these categories may be disposed of as "Other" for the following reasons: unit decertified, business closed, matter referred to arbitration, parties allowed to exercise their right to strike/lockout (under s.55(6)), or the Mediator reported out of the dispute at the request of one or more parties. The latter example may include applications for which a settlement is ultimately reached at a later date.

[2] These applications were included in the *LRB Annual Report* for the first time in 2003. Beginning in 2004, figures for individual sections as well as the combined totals for "CAAB" (ss.86, 87, 104, 105) are included in this report. In general, for this category, "Withdrawn" indicates withdrawal / settlement prior to any appointments and "Settled" indicates withdrawal / settlement subsequent to the appointment of a Settlement Officer but prior to appointment of an Arbitrator (for further details on Settlement Officer appointments, see TABLE 9). This column reflects the number of Labour Relations Board evidentiary hearings and therefore arbitration hearings are not included for these categories. See individual section notes regarding "Other" dispositions.

[3] Arbitrator appointed (recorded in previous 2004 and 2003 reports as "Granted").

[4] Matter referred back to the parties under Section 87(3).

[5] Arbitrator appointed (recorded in previous 2004 and 2003 reports as "Granted"). For 34 cases in 2004 and 40 cases in 2003, a Settlement Officer was appointed in addition to an Arbitrator.

[6] Mediator-Arbitrator appointed.

[7] For previous 2004 and 2003 reports, this figure is defined in a footnote regarding the number of CAAB applications "Settled". See Note 2 above for further detail.

TABLE 1: Applications and Complaints Filed and Disposed of in 2004 - continued (including comparative figures for 2003)

Type of Application / Complaint	Year	Filed	Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other	Hearing Held
Part 5 Applications (Strikes, Lockouts, Picketing, etc.) (ss.57-67 and ss.69-70)	2004	120	109	0	0	61	26	22	0	62
	2003	78	54	0	0	28	17	9	0	30
Replacement Workers (s.68)	2004	9	9	0	0	5	1	3	0	7
	2003	2	2	0	0	0	1	1	0	1
Essential Service Designations (s.72)	2004	230	228	0	0	155	73	0	0	3
	2003	7	5	0	0	1	4	0	0	1
Last Offer Vote (s.78)	2004	21	22	0	1	0	21[1]	0	0	0
	2003	23	22	0	1	0	21[2]	0	0	2
Review of Arbitration Award (s.99)	2004	38	58	0	8	0	11	39	0	5
	2003	61	55	0	7	0	10	38	0	2
Interim Order (s.133(5))	2004	13	16	0	7	1	5	3	0	4
	2003	11	10	0	6	0	2	2	0	4
File and Order in Supreme Court (s.135)	2004	41	46	0	14	0	32	0	0	0
	2003	36	37	0	14	0	22	1	0	0
Interpretation of the Legislation as it Applies to the Collective Bargaining Relationship (s.139)	2004	46	32	0	21	0	0	0	11[3]	9
	2003	34	44	1	32	0	0	0	11[3]	11
Reconsideration of a Decision (s.141)	2004	97	112	0	6	0	12	94[4]	0	6
	2003	122	111	1	11	0	19	80[5]	0	10

[1] In 15 cases the final offer was rejected and in five cases the offer was accepted; and in one case the application was withdrawn prior to the ballots being counted.

[2] In 11 cases the final offer was rejected and in seven cases the offer was accepted; in two cases the parties settled prior to the vote being conducted; and in one case the Board determined that prior to receipt of the application, a collective agreement was in effect.

[3] Ruling made.

[4] For 79 of the 94 applications dismissed in 2004, leave to apply was denied.

[5] For 72 of the 80 applications dismissed in 2003, leave to apply was denied.

TABLE 1: Applications and Complaints Filed and Disposed of in 2004 - continued (including comparative figures for 2003)

Type of Application / Complaint	Year	Filed	Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other	Hearing Held
Declaratory Opinion (excluding Declaratory Opinions Pertaining to Part V of the Legislation) (s.143)	2004	4	5	0	4	0	0	1	0	3
	2003	2	4	0	2	0	0	2	0	0
Miscellaneous	2004	63[1]	73[2]	0	5	26	18	24	0	14
	2003	138[3]	127[4]	5	10	37	45	30	0	15
Total	**2004**	**2,400**	**2,285**	**66**	**293**	**607**	**700**	**375**	**244**	**507[5]**
	2003	**2,724**	**2,546**	**103**	**416**	**570**	**707**	**387**	**363**	**518[6]**

NOTE: The sections quoted are from the *Labour Relations Code* unless otherwise indicated.

[1] Includes 11 stay applications.
[2] Includes 13 stay applications: two granted and 11 dismissed.
[3] Includes 21 stay applications.
[4] Includes 20 stay applications: three granted, 15 dismissed, and two withdrawn.
[5] 507 applications disposed of in 2004 were heard sometime during the process. In 2004, the Board held 519 hearings (including 403 expedited hearings to deal with certification, expanded bargaining unit, and decertification applications), some of which dealt with multiple applications and for some of which, the applications had not been disposed of by the end of 2004.
[6] 518 applications disposed of in 2003 were heard sometime during the process. In 2003, the Board held 349 hearings (including 252 expedited hearings to deal with certification, expanded bargaining unit, and decertification applications), some of which dealt with multiple applications and for some of which, the applications had not been disposed of by the end of 2003.

TABLE 1A: Certification Applications and Certification Cancellations Under S.33(2) Granted in 2004 - Analyzed by Industry

Type of Industry	Certification Applications		Certification Cancellations[1]	
	Number of Applications Granted	Number of Employees[2]	Number of Applications Granted	Number of Employees[3]
Accommodation, Food and Beverage Services	1	14	10	194
Business Services	0	0	1	14
Construction	43	520	8	54
Educational Services	0	0	2	21
Finance and Insurance	0	0	1	19
Fishing and Trapping	2	34	0	0
Health and Social Services	12	365	4	149
Logging and Forestry	2	86	2	17
Manufacturing	10	856	5	49
Mining (Including Milling), Quarrying and Oil Wells	0	0	1	2
Retail Trade	1	6	2	63
Transportation and Storage	2	107	3	54
Wholesale Trade	1	29	2	25
Other Services	14	488	8	148
Total	**88**	**2,505**	**49**	**809**

[1] In order to accurately reflect the number of employees per granted application, only those certification cancellation applications brought by employees under Section 33(2) of the *Labour Relations Code* are included in this table. Thus, the total number of applications granted may not equal the corresponding figure from the "Certification Cancellations" category in TABLE 1. See TABLE 3 for a breakdown of Certification Cancellations by applicant type.

[2] The number of employees on an application for certification is based on the information supplied by the union on the application form.

[3] The number of employees on an application to cancel a certification is based on the number of eligible voters on the Return of Poll signed by the returning officer.

TABLE 1B: Certification Applications and Certification Cancellations Under S.33(2) Filed / Granted in 2004 - Analyzed by Union

UNION NAME (Names have been abbreviated: where possible, the commonly used, shortened form appears)	Certification Applications		Certification Cancellations[1]	
	Number of Applications Filed	Number of Applications Granted	Number of Applications Filed[2]	Number of Applications Granted
Administrative Professional & Technical Employees' Union	1	0	0	0
Bakery Workers (PBWA)	0	1	0	0
BCGEU	24	9	4	3
Boilermakers	1	1	1	1
Brewery Workers	1	0	0	0
Bricklayers	1	1	0	0
Canadian Culinary & Hospitality Employees' Union	1	0	0	0
Canadian Union of Skilled Workers - BC	0	1	0	0
Carpenters (not including CMAW or CFAW councils)	7	10	2	1
Carpenters/Floorlayers (CFAW Council)	37	1	0	0
Carpenters/CEP (CMAW Council)	125	3	0	0
CAW	6	1	5	4
Cement Masons (formerly identified as Plasterers)	1	1	0	0
CEP	2	2	3	1
CISIWU	2	1	0	0
CLAC	3	3	0	0
CUPE	4	1	2	1
Electrical Workers (IBEW)	1	1	4	4
Food & Commercial Workers (UFCW)	4	0	2	1
Health Sciences Association (HSA)	0	0	1	1
Hospital Employees Union (HEU)	55	6	1	1
Hotel Employees	6	4	16	9
IATSE	2	1	1	1
Iron Workers	3	1	0	0
IWA (now: Steelworkers)	18	0	6	7
Labourers	12	7	1	2
Longshore (ILWU)	1	0	0	0
Machinists and Aerospace Workers	1	1	2	1
Marine Workers	1	0	0	0

TABLE 1B: Certification Applications and Certification Cancellations Under S.33(2) Filed / Granted in 2004 - Analyzed by Union

UNION NAME (Names have been abbreviated: where possible, the commonly used, shortened form appears)	Certification Applications		Certification Cancellations[1]	
	Number of Applications Filed	Number of Applications Granted	Number of Applications Filed[2]	Number of Applications Granted
Merchant Service Guild	1	1	0	0
Millwrights	0	0	0	0
Office & Professional Employees (OPEIU/COPE)	1	0	0	0
Operating Engineers (IUOE)	14	4	4	3
Painters (not including Glaziers 1527)	8	8	0	0
Plumbers & Refrigeration Workers	0	0	2	2
PPWC	3	2	0	0
Service Employees (SEIU)	0	0	1	1
Sheet Metal Workers	7	3	1	1
Steelworkers	10	7	4	0
Teachers' Federation Employees' Union (TFEU)	2	2	0	0
Teamsters	7	3	4	3
United Truckers of BC	1	1	0	0
Single Employer Independent Union	0	0	1	1
Total	**374**	**88**	**68**	**49**

[1] Only those certification cancellation applications brought by employees under S.33(2) of the *Labour Relations Code* are included in this table. Thus, the number of applications filed and/or granted may not equal the corresponding figure from the "Certification Cancellations" category in TABLE 1. See TABLE 3 for a breakdown of certification cancellations by applicant type.

[2] Does not include applications that were not proceeded with (NPW) due to incorrect or insufficient information supplied on the application.

TABLE 2: Certification Applications and Certification Cancellations Under S.33(2) Filed / Decided in 2004

Type of Application		Filed	Granted	Dismissed	Total 'Decided'
Total Certification Applications	Number of Applications	374	88	34	122
	Number of Employees[1]	19,705	2,505	1,301	3,806
Certification Applications for Previously Unorganized Employees	Number of Applications	329	75	31	106
	Number of Employees	18,240	1,541	1,114	2,655
Certification Applications for Organized Employees	Number of Applications	45	13	3	16
	Number of Employees	1,465	964	187	1,151
Total Applications to Cancel a Certification Brought by Employees under S.33(2)[2]	Number of Applications	68	49	17	66
	Number of Employees[3]	1,235	809	617	1,426

[1] The number of employees on an application for certification is based on the information supplied by the union on the application form.

[2] Since only those certification cancellation applications brought by employees under S.33(2) of the *Labour Relations Code* are included in this table, the number of applications filed and/or decided may not equal the corresponding figure from the "Certification Cancellations" category in TABLE 1. See TABLE 3 for a breakdown of certification cancellations by applicant type.

[3] The number of employees on an application to cancel a certification is based on the number of eligible voters on the Return of Poll signed by the returning officer. The number of employees on an application for which a Return of Poll is either not available or not applicable (in particular, for the number of applications Filed) is based on the bargaining unit size listed in the report of the Industrial Relations Officer.

TABLE 2A: Certification Applications and Certification Cancellations Under S.33(2) Granted in 2004 - Analyzed by Size of Bargaining Unit

Number of Employees	Certification Applications		Certification Cancellations[1]	
	Number of Applications	Percentage of Applications	Number of Applications	Percentage of Applications
1 to 10	40	45.5%	23	46.9%
11 to 20	18	20.5%	16	32.7%
21 to 30	9	10.2%	4	8.2%
31 to 40	6	6.8%	2	4.1%
41 to 50	2	2.3%	1	2.0%
51 to 60	4	4.6%	1	2.0%
61 to 70	1	1.1%	1	2.0%
71 to 80	1	1.1%	0	0%
81 to 90	1	1.1%	0	0%
91 to 100	1	1.1%	0	0%
101 to 200	4	4.6%	1	2.0%
Over 200	1	1.1%	0	0%
Total	**88**	**100%**	**49**	**100%**

[1] Since only those certification cancellation applications brought by employees under S.33(2) of the *Labour Relations Code* are included in this table, the number of applications granted may not equal the corresponding figure from the "Certification Cancellations" category in TABLE 1. See TABLE 3 for a breakdown of certification cancellations by applicant type.

Chart 2A: Certification Applications Granted in 2004
Analyzed by Size of Bargaining Unit (Number of Employees)

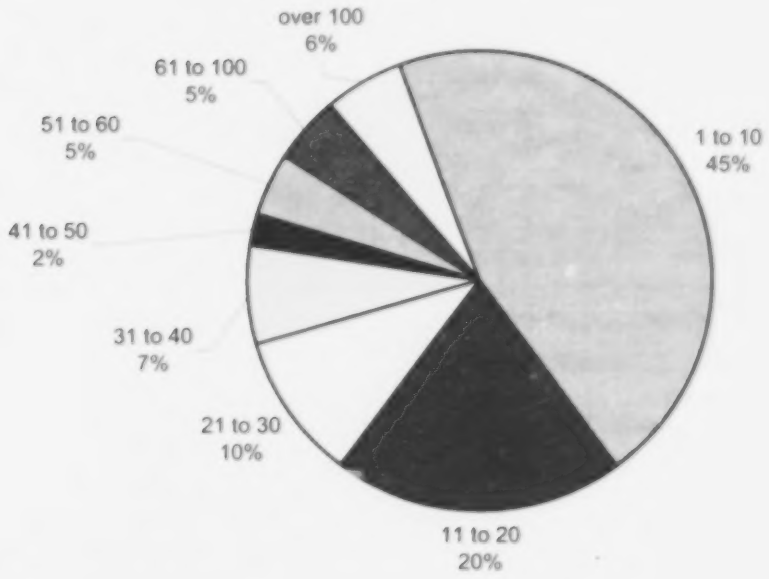


TABLE 2B: Certification Applications Granted Between 1990 and 2004 by Size of the Bargaining Unit

Year	Number and Percentage of Certification Applications						
	1 to 20 Employees		21 to 50 Employees		Over 50 Employees		Total
1990	181	72.4%	47	18.8%	22	8.8%	250
1991	173	70.9%	47	19.3%	24	9.8%	244
1992	130	66.0%	47	23.9%	20	10.1%	197
1993	353	69.4%	102	20.0%	54	10.6%	509
1994	292	66.9%	86	19.7%	59	13.4%	437
1995	253	64.4%	100	25.4%	40	10.2%	393
1996	312	72.5%	80	18.6%	38	8.9%	430
1997	285	69.6%	71	17.4%	53	13.0%	409
1998	233	67.0%	65	18.7%	50	14.3%	348[1]
1999	239	65.8%	65	17.9%	59	16.3%	363[2]
2000	169	64.3%	45	17.1%	49	18.6%	263
2001	105	58.0%	40	22.1%	36	19.9%	181
2002	62	70.4%	13	14.8%	13	14.8%	88
2003	54	72.0%	11	14.7%	10	13.3%	75[3]
2004	58	65.9%	17	19.3%	13	14.8%	88

[1] One single certification application resulted in the issuance of two individual certifications; thus the total of certifications granted in 1998 amounts to 349.

[2] One single certification application resulted in the issuance of two individual certifications; thus the total of certifications granted in 1999 amounts to 364.

[3] Five separate certification applications for the same employee bargaining unit were granted and simultaneously consolidated resulting in the issuance of a single certification; thus the total number of new certifications granted for a bargaining unit size between 1 and 10 employees is 35 and the total number of certifications granted in 2003 is 71.

TABLE 3: Applications to Cancel Certifications Disposed of in 2004 (including comparative figures for 2003)

Type of Applicant (and Application)	Year	Not Proceeded With	Withdrawn	Dismissed	Granted	Total
Filed by Employee(s) (S.33(2))	2004	9	2	17	49	77
	2003	14	11	11	62	98
Filed by Employee(s) (S.142 - "Partial Decertification")[1]	2004	1	3	12	8	24
	2003	1	2	8	16	27
Filed by Employer(s)	2004	0	0	2	4	6
	2003	1	0	1	4	6
Filed by Union(s)	2004	0	1	0	0	1
	2003	0	0	0	9	9
Total	**2004**	**10**	**6**	**31**	**61**	**108**
	2003	**16**	**13**	**20**	**91**	**140**

[1] Applications filed under Section 142 for "Partial Decertification" are included in TABLE 1 under the category "Certification Variances"; therefore, subtracting the number of applications by employees under S.142 from the Total number of applications disposed of in TABLE 3 will equal the number of applications disposed of in TABLE 1 for the "Certification Cancellations" category.

TABLE 4: Reconsiderations Disposed of in 2004

Type Of Application Being Reconsidered	Leave Denied	Dismissed	Granted	Withdrawn	Not Proceeded With	Total
Duty of Fair Representation	32	3	1	1	0	37
"Other" Unfair Labour Practice Complaint Adjudication	4	1	1	0	0	6
Certification	11	0	0	2	0	13
Variance of a Certification	2	0	1	0	0	3
Partial Decertification	2	0	0	0	0	2
Cancellation of Certification	2	2	0	0	0	4
Cancellation of Voluntarily Recognized Bargaining Rights	0	0	0	1	0	1
Declaration of Employer Successor Status	4	0	0	0	0	4
Common Employer	1	1	0	0	0	2
Alleged Illegal Strikes, Lockouts, Picketing, etc.	1	2	2	1	0	6
Review of Arbitration Award	7	3	4	0	0	14
Interpretation of the Legislation as it Applies to the Collective Bargaining Relationship	1	0	0	0	0	1
Stay of Procedings	1	0	0	0	0	1
Last Offer Vote	1	0	1	0	0	2
Ruling re: Procedure	8	3	0	1	0	12
Ruling re: Declaratory Opinion	1	0	0	0	0	1
Ruling re: Section 54 Interpretation	0	0	1	0	0	1
Ruling re: second original decision on Duty of Fair Representation						
Interim Ruling re: successorship issue	0	0	1	0	0	1
TOTAL	**79**	**15**	**12**	**6**	**0**	**112**

Appellant	Leave Denied	Dismissed	Granted	Withdrawn	Not Proceeded With	Total
Employer(s)	17	5	6	2	0	30
Union(s)	25	8	5	3	0	41
Employee(s)	37	2	0	1	0	41
Other	0	0	1	0	0	1
TOTAL	**79**	**15**	**12**	**6**	**0**	**112**

Chart 4: Reconsiderations Disposed of in 2004
(Types of Applications Being Reconsidered)

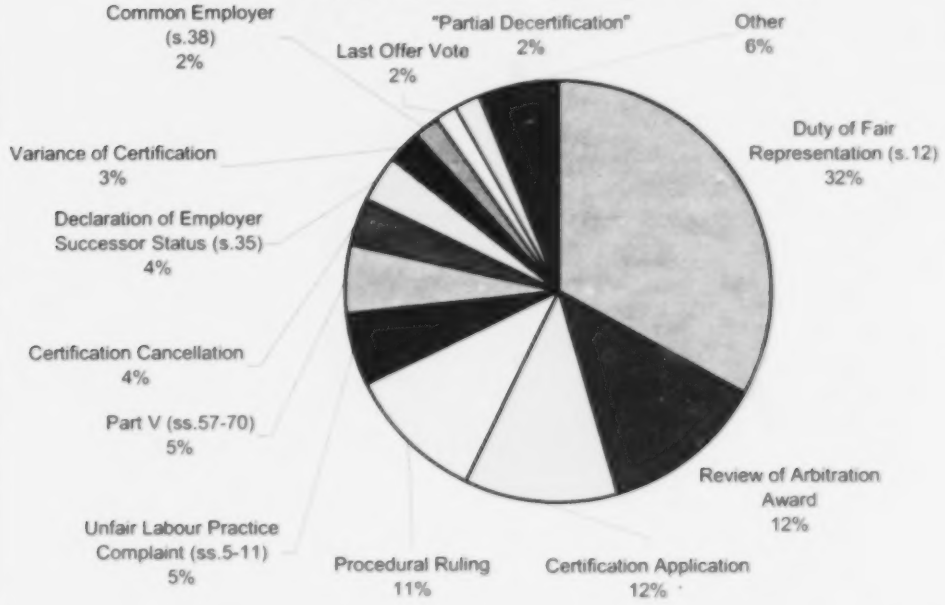

Common Employer (s.38) 2%
"Partial Decertification" 2%
Last Offer Vote 2%
Other 6%
Duty of Fair Representation (s.12) 32%
Variance of Certification 3%
Declaration of Employer Successor Status (s.35) 4%
Certification Cancellation 4%
Part V (ss.57-70) 5%
Review of Arbitration Award 12%
Unfair Labour Practice Complaint (ss.5-11) 5%
Procedural Ruling 11%
Certification Application 12%

TABLE 5: "Success" Rate of Reconsiderations Disposed of in 1994 to 2004

Year	Total Applications Disposed of	Withdrawn	Processed to a Final Decision	Resulted in a Revision of the Original Decision	"Success" Rate of Reconsiderations
1994	143	24	119	13	11%
1995	131	16	115	22	19%
1996	87	7	80	8	10%
1997	113	21	92	17	18%
1998	134	20	114	11	10%
1999	150	9	141	22	16%
2000	129	11	118	19	16%
2001	111	13	98	23	23%
2002	92	8	84	19	23%
2003	111	11	100	19	19%
2004	112	6	106	12	11%

TABLE 6: "Success" Rate of Reviews of Arbitration Awards Disposed of in 1994 to 2004

Year	Total Applications Disposed of	Withdrawn	Processed to a Final Decision	Resulted in a Revision of the Original Decision	"Success" Rate of Reconsiderations
1994	43	4	39	14	36%
1995	55	5	50	7	14%
1996	67	8	59	13	22%
1997	66	13	53	8	15%
1998	65	10	55	13	24%
1999	54	11	43	7	16%
2000	69	5	64	15	23%
2001	60	13	47	16	34%
2002	58	4	54	12	22%
2003	55	7	48	10	21%
2004	58	8	50	11	22%

TABLE 7: Applications and Complaints Filed in 2004 Analyzed by Applicant

Type of Application	Filed by Employer(s)	Filed by Union(s)	Filed by Employee(s)	Other	Total
Complaints of Unfair Labour Practices					
Complaints Regarding Internal Union Affairs	0	1	13	0	14
Complaints Regarding Duty to Bargain in Good Faith	9	29	0	0	38
Complaints Regarding Duty of Fair Representation	0	0	90	0	90
Other Unfair Labour Practice Complaints	7	219	10	0	233
Religious Exemption	0	0	6	0	6
Certification Application	0	374	0	0	374
Certification Variance	35	141	15	0	191
Certification Cancellation	9	16	77	0	102
Cancellation of a Voluntary Recognition	0	0	9	0	9
Permission to Alter Conditions of Employment	1	0	0	0	1
Alleged Unlawful Alteration of Employment Terms and Conditions	1	20	0	0	21
Declaration of Successor Status					
Successor Employer	15	53	1	0	68
Successor Union	0	60	0	0	60
Common Employer	2	19	1	0	22
Accreditation Variances	12	0	0	0	12
Alleged Failure to Execute or Comply with Collective Agreement	0	3	0	0	3
First Collective Agreement	3	4	0	0	7
Appointment of a Mediation Officer	41	70	0	0	111
CAAB Applications					
Section 86 (Appointment of Arbitrator)	*11*	*73*	*0*	*0*	*84*
Section 87 (Appointment of Settlement Officer)	*1*	*35*	*0*	*0*	*36*
Section 104 (Appointment of Arbitrator)	*14*	*216*	*0*	*0*	*230*
Section 105 (Appointment of Mediator-Arbitrator)	*6*	*6*	*0*	*0*	*6*
Combined CAAB Sections	32	330	0	0	356
Part V Applications (Strikes, Lockouts, Picketing, etc.)	109	10	1	0	120
Replacement Workers	0	9	0	0	9
Essential Service Designations	0	0	0	230	230

TABLE 7: Applications and Complaints Filed in 2004 Analyzed by Applicant - continued

Type of Application	Filed by Employer(s)	Filed by Union(s)	Filed by Employee(s)	Other	Total[1]
Last Offer Vote	21	0	0	0	21
Review of Arbitration Award	18	15	5	0	38
Interim Order	5	8	0	0	13
File Order in Supreme Court	31	8	1	1	41
Interpretation of the Legislation as it Applies to the Collective Bargaining Relationship	6	39	1	0	46
Reconsideration of a Decision	30	36	30	1	97
Declaratory Opinion (Excluding Declaratory Opinions Pertaining to Part V of the Legislation)	3	1	0	0	4
Miscellaneous	19	37	4	5	63
TOTAL	**409**	**1,502**	**264**	**237**	**2,400[1]**

[1] Totals by applicant do not equate with total applications because certain applications were filed jointly, by more than one type of party.

TABLE 8: Time Required to Process Certain Applications in 2004

Type of Application	Number of Applications Disposed of[1]	Average Number of Days	Median Number of Days
Unfair Labour Practice Complaints Under S.6 of the *Labour Relations Code* Where a Dismissed Employee is Involved	29	97	72.5
Complaints Regarding Duty of Fair Representation (S.12)	92	335	231
Certification Applications (Ss.18, 19, 28)	177	60	55
Certification Cancellations (S.33(2))	68	45	32.5
Declaration of Successor Employer (S.35)	74	183	78
Common Employer (S.38)	22	431	320
Review of Arbitration Award (S.99)	58	224	199
Interpretation of the Legislation as it Applies to the Collective Bargaining Relationship (S.139)	32	525	308
Reconsideration of a Decision (S.141)	112	125	92.5

[1] Does not include applications not proceeded with because applicant did not file sufficient information.

TABLE 9: Officer Assignments Completed in 2004

	Assignment Outcome						
Type of Application / Complaint	Settled/ Withdrawn	Resolved Issues / Assisted at Hearing	Narrowed Issues / Assisted at Hearing	To Adjudication (No Informal)	Report of Investigation	Other[1]	Total
Part 5 (ss.57 to 70)[2]	10	1	4	1	0	3	19
Unfair Labour Practice (ss.5 to 11)[3]	41	2	9	15	0	6	73
Certification & Variance to Expand the Bargaining Unit[4]	30	15	29	5	0	2	81
Decertification & "Partial Decertification"[5]	16	10	15	3	0	0	44
Collective Agreement Arbitration (CAAB) (ss.86, 87, 104, 105)[6]	60	0	17	4	0	6	87
Other	21	0	10	2	0	1	34
TOTAL	**178**	**28**	**84**	**30**	**0**	**18**	**338**

[1] Includes outcome 'Consent Order issued': five Consent Orders were issued for Part 5 and Unfair Labour Practice complaints.
[2] Includes complaints regarding strikes, lockouts, picketing, etc.
[3] Excludes duty of fair representation (s.12)
[4] In reports prior to 2001, the number of certification & expanded bargaining unit applications "Settled / Withdrawn" were included in the "Resolved Issues / Assisted at Hearing" assignment outcome category.
[5] Prior to 2003 applications for 'partial decertification' were included under "Other" types of applications.
[6] Reporting of assignments under the Collective Agreement Arbitration provisions of the *Labour Relations Code* first appears in the 2003 LRB Annual Report.

TABLE 10: Requests for Automatic Certification Pursuant to Section 14(4)(f) of the *Labour Relations Code* as a Result of an Alleged Unfair Labour Practice Violation
(Previously Section 5(4)(e) of the *Labour Code* and the *Industrial Relations Act*)

Year	Requested	Granted
1977	25	1
1978	17	1
1979	25	1
1980	22	0
1981	34	2
1982	15	2
1983	18	0
1984	21	3
1985	16	2
1986	18	2
1987	17	0
1988	10	0
1989	10	0
1990	18	3
1991	20	1
1992	32	6
1993	31	2
1994	31	2
1995	35	0
1996	41	1
1997	52	3
1998	40	0
1999	51	0
2000	21	1
2001	9	0
2002	12	3
2003	13	0
2004	8	1
TOTAL	**662**	**37**

These requests relate to *Other Unfair Labour Practice Complaints* and are not included under Applications for Certification.

Note: Figures for 1977 to 1992 are from the Board's Annual Reports. Figures for 1993 to 1995 were not included in the Annual Reports for these years.